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ABSTRACT

Eight papers examining different aspects of the effects of court decisions on education are contained in this book, the first of two volumes. The papers were solicited from scholars in the fields of law, political science, sociology, and education in conjunction with a 1979 conference held in Madison, Wisconsin. The conference was called to analyze the impact of judges' decisions on school policy, particularly in the areas of desegregation, finance, and student rights and discipline. The contributors analyze the courts' role in fostering the racial integration of the nation's schools. Chapter 1 contains a plaintiff's view of the process set in motion 25 years ago by "Brown v. Board of Education." Chapter 2 points out differences between social science and the law that restrict the use of social science testimony in public school desegregation cases. The third and fourth chapters are indepth studies of the desegregation processes in two cities, Boston and Milwaukee. (Author/LD)

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SCHOOLS & THE COURTS

Volume I
DESEGREGATION

Jack Greenberg, Thomas F. Pettigrew,
Susan Greenblatt, Walter McCann,
David A. Bennett

U.S. DEPARTMENT OF HEALTH,
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Contributing Authors

David A. Bennett
Deputy Superintendent, Milwaukee Public Schools
Milwaukee, Wisconsin

Jack Greenberg
Director-Counsel, NAACP Legal Defense and Educational Fund
New York, New York

Susan Greenblatt
Lecturer on Education, Graduate School of Education
Harvard University

Walter McCann
Lecturer on Education, Graduate School of Education, Harvard University
Dean, Varney School of Business and Public Administration University of Hartford

Thomas F. Pettigrew
Professor of Social Psychology and Sociology, Department of Psychology and Social Relations
Harvard University

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Preface

The courts' impact on schools was the theme of a conference held in Madison, Wisconsin, on April 26-27, 1979, cosponsored by the ERIC Clearinghouse on Educational Management at the University of Oregon and the School of Education of the University of Wisconsin—Madison.

The conference was called to analyze the impact of judges' decisions on school policy, particularly in the areas of desegregation, finance, and student rights and discipline. Because of the breadth of that impact, analysis of which requires the research skills and perspectives of several disciplines, the conference was intentionally eclectic in both subject matter and attendance. Eight papers examining different aspects of the effects of court decisions on education were solicited from scholars from the fields of law, political science, sociology, and education, as well as a school practitioner and an attorney.

These papers, revised and edited since their presentation, are contained in this two-volume monograph, of which the ERIC Clearinghouse on Educational Management is pleased to serve as publisher. Volume one combines four papers on desegregation; volume two includes two papers on the methodology of assessing the impact of court decisions, a third paper on the impact of student rights and discipline cases, and a fourth on school finance decisions.

The contributors to this volume give a multifaceted analysis of the courts' role in fostering the racial integration of the nation's schools. A plaintiff's view of the process set in motion twenty-five years ago by *Brown v. Board of Education* is offered by Jack Greenberg, an attorney who helped argue that case before the U.S. Supreme Court. Greenberg, in his present role as director-counsel of the NAACP Legal Defense and Educational Fund, looks back on the revolutionary changes inaugurated by *Brown*. He concludes, "We would be less of a country and diminished in our self-esteem but for the judicial intervention of the past twenty-five years."

Another author directly involved in litigation on desegregation, though not as an attorney but as an expert witness, is Harvard sociologist Thomas F. Pettigrew. Drawing from his several experiences as a witness, Pettigrew points out differences between social science and the law that restrict the use of social science testimony in public school desegregation cases. Yet he suggests ways in which the inherent tensions between the two disciplines can help to sharpen the perspectives of each.

The third and fourth chapters are indepth studies of the desegregation processes in two cities. Susan Greenblatt and Walter McCann, both of Harvard's Graduate School of Education, assess the effects of desegregation on the Boston school system and evaluate the proper role of the federal courts in the implementation process. Among the lessons offered by the Boston experience, the authors point to the fact "that a strong, persevering judge may bring about educational change in the most rigid of school systems."

What it's like to be on the receiving end of a court order to desegregate is described by David A. Bennett, deputy superintendent of the Milwaukee Public Schools. Unlike Boston's school authorities, the Milwaukee superintendent and administrative staff fully cooperated with the court in implementing its desegregation order. Bennett recapitulates the fourteen-year history of litigation and reviews its impact on the community and the school administration.

I wish to acknowledge the careful editing performed on the manuscripts by two members of the Clearinghouse's staff —Stuart Smith and Ellen Rice. Shonna Husbands deserves credit for the attractive design.

Philip K. Piele
Professor and Director
ERIC Clearinghouse on Educational
Management

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Twenty-Five Years after *Brown v. Board:* A Plaintiff's View

Jack Greenberg
NAACP Legal Defense
And Educational Fund

Introduction

May 17, 1979, was the twenty-fifth anniversary of the decision of the United States Supreme Court in *Brown v. Board of Education,*[1] which declared unconstitutional racial segregation imposed by law in the United States. The *Brown* decision led to social, legislative, and judicial events that continue to shape race relations in America to this day and will have consequences for years to come. Private employment, housing, transportation, public accommodations, and so forth have been integrated. Other ethnic groups in America--Chicanos, Puerto Ricans, Asian Americans, and American Indians--have asserted and have had satisfied in some part their claims for equality. The American women's movement rests on legal foundations laid to secure racial equality, while women struggle to secure passage of a constitutional amendment of their own. The Carter administration's program for human rights around the globe traces directly to *Brown*. Of course, the history of human rights in the United States goes back far beyond *Brown* and has led to results far more complex than the declarations of a single Supreme Court decision. In considering the influence *Brown* will continue to have and the likely consequences of the widening concepts of equality asserted in emulation of it, a look back may be in order.

Historical Background of *Brown*

The *Brown* decision was the legal expression of a long

American historical process, and that process continues. Three centuries ago, America's black citizens were dragged to our shores from the African continent in chains. Our original Constitution permitted the institution of slavery to function and acknowledged its validity by providing that "Representatives and direct Taxes shall be apportioned among the several States . . . by adding to the whole number of free persons . . . three fifths of all other persons."[2] This was a not very euphemistic way of saying that a black man was worth three-fifths of a white man for purposes of computing representation, though, of course, to make matters worse, blacks could not vote. Only a bloody Civil War, in largest part fought over the issue of slavery, led to its abolition and the passage of the three great Reconstruction Amendments:

- The Thirteenth, which declared slavery unconstitutional
- The Fourteenth, which declared that all persons born in the United States are citizens of the United States and of the state in which they reside, that no state shall abridge their privileges and immunities, nor deprive any person of life, liberty, or property without due process of law, nor deny to any person the equal protection of the laws
- The Fifteenth, which decreed that the right of citizens to vote shall not be abridged on account of race, color, or previous condition of servitude.

The adoption of these amendments took place between 1865 and 1870. Although these amendments might well have accomplished the same results intended by *Brown* in 1954, their adoption proved to be a false start and a false hope. Just as the first ten amendments to the Constitution--the Bill of Rights--have acquired meaning and force over nearly two centuries, so did the Reconstruction Amendments become effective only slowly, with long periods of dormancy preceding the vigor that developed in the fifties and sixties.

Soon after adopting the amendments, the country turned its back on Reconstruction. Black codes, segregation statutes, racist social practices, all manner of legal, illegal, and violent restrictions on the franchise, and lynch mobs continued for many years to keep the blacks in a position as close as possible to that in which they fared during slavery. Between 1889 and 1940, according to the Tuskegee Institute, 3,833 persons were lynched, about four-fifths of whom were Negroes, mostly in the South and the border states.[3]

The American South and large parts of the rest of the country enforced American versions of South Africa's Group Areas Acts, Reservation of Separate Amenities Acts, Pass Laws, Job Reservation, Immorality Acts, Prohibition of Mixed Marriages Legislation, and various euphemistic limits on black voting in the form of grandfather clauses, literacy tests, technical registration limitations, and so forth. Litigation chipped away at this system in the early 1900s, but it remained very considerably in place prior to *Brown* in 1954.

When we argued the school segregation cases in Washington, D.C., at the beginning of the nineteen fifties, the nation's capital was in some ways more racially segregated than Cape Town or Johannesburg today. Blacks were excluded from hotels, except a couple of black ones, and from all white restaurants. The only place a black and a white could dine in public together was at the Union railroad station in downtown Washington. That condition, of course, was true throughout the South and in many parts of the border states.

Temporal Efficacy of *Brown*

None of us should be foolish enough to believe that court decrees or statutes alone were capable of revolutionizing a society so deeply divided racially. The Constitution and the laws implementing it, more or less and with some time lag perhaps, reflect underlying social reality. Justice Holmes's observation that "the life of the law has not been logic: it has been experience"[4] is as true for race relations as for torts, contracts, and crimes. Even those of us fortunate enough to have participated in *Brown* must acknowledge that the court decision and subsequent legislation expressed much more than the well-crafted, persuasive arguments of counsel. The famous 1896 case of *Plessy v. Ferguson*,[5] which imbedded the separate but equal doctrine in our law, would have outlawed segregation if it had been decided in 1954. And *Brown*, notwithstanding the learning and forensic powers of the plaintiffs' counsel, would have been lost if it had been argued in 1896.

The *Brown* decision came at a time when vast social, economic, and, indeed, international forces were making their influence felt on the United States, pressing it to move from a racist to an egalitarian regime. The rising level of education and aspiration of America's black citizens, the consciousness-elevating consequences of World War II as a struggle against Nazi racism, objections expressed against racism in America by darker-skinned persons elsewhere on the globe, and the stringent, albeit hypocritical, commentary of our communist adversaries inevitably affected America's national consciousness. The existence of constitutional amendments, however, provided a matrix within which change was facilitated and institutionalized.

The school segregation cases were a legal expression of these developments and turned our country on an entirely different course. National policy now repudiates racism in all its forms. Now we have sixteen black congressmen, and in time there will be more. There are thousands of black elected officials: mayors, judges, district attorneys, state legislators, school board members, and so forth. Black students in the United States attend college, for the first time, in almost the same proportion as whites. In some parts of the United States today, particularly the Northeast, the incomes of younger black, educated families approximate those of whites.[6] *Brown*, the cases that followed it, and legislation have struck down--at least in law and with varying degrees of practical success--discrimination and segregation in public accommodations, employment, housing, voting, and interpersonal relationships such as marriage and cohabitation.

But the decision and what followed in its train were not a panacea. Black unemployment remains double that of white. Black teen-age unemployment is at the 40 percent level. Black median income is only 60 percent that of white.[7] Although schools are integrated where they never were before, in many places--principally large cities--many schools are nearly all black or all white. Most big-city blacks live in ghettos, which in physical form often have been compared unfavorably with, for example, Soweto, the black suburb outside Johannesburg. Nevertheless, blacks in American ghettos do have the right to move outward and upward, and some residents in fact move out and up. In New York City and its suburbs, for example, a substantial black middle-class lives integrated throughout the city as a whole.

Only those who do not know history would deny that things have changed, and much for the better. I recount this past to underscore that what courts do to and for schools does not affect them in isolation. The court's action expresses a social process and affects the schools in a social context.

Impact of *Brown* and Other Court Decisions on Education

Let us go beyond *Brown* and its effect on schools and general societal discrimination, to say a word about its effect on education, of which schooling is only a part. Schools are but one of the teaching institutions in society. Teaching children the moral precepts of our society, typically expressed in law, is one of the primary tasks of all our institutions. Schools, of course, are supposed to teach those standards in addition to imparting cognitive skills. Some say that is the most important thing schools do. Indeed, the dissonance between basic precepts as taught in school, church, and wherever else moral standards were imparted and the racial segregation required and supported by law until 1954 was termed by Gunnar Myrdal to be our American Dilemma, a dilemma that had to be resolved. And so it may be fitting to acknowledge before going on to other matters that courts have had an impact on the totality of education by ending a large part of the societal segregation and discrimination that society had taught children was an accepted way to run our country. And, we must remind ourselves, these changes originated with the school segregation decisions.

Progress of the Transition

Moving to what courts have changed inside school buildings, the range and effects are extraordinary. Let us consider first the most obvious--the partial transition from a system of legally sanctioned racial segregation to one of partial integration, in which the remaining concentrations of racial inequality are under assault. Those concentrations and, indeed, deliberately created segregation continue to exist but the burden of proof now rests with those who would attempt to justify them, both morally and legally. To me at least, they seem to be increasingly perceived as wrong, shady arrangements for which excuses constantly are being made. Their demise is not imminent, but integration is on the way to being accepted widely as the proper social goal, the first prerequisite to its being achieved widely in reality.

Nowadays, when one travels throughout the South it is common in rural areas and small towns to see thoroughly integrated schoolhouses. The integrated ball games in the schoolyards must be a powerful force toward creating similar relationships in later life. If the playing fields of Eton were where the leaders of Britain developed, may it not be that on the playing fields of the southern small town and rural school, leadership attitudes and relationships are being formed that will dominate a large part of the next generation?

There are, of course, segregated private schools that have siphoned off white children from biracial schools. But although some of these schools in some states are strategically concentrated to diminish integration, the number attending them is proportionately small. And, here, once more, the concept is under attack. Proposed amendments to the Internal Revenue Code will make it more difficult for such schools to exist. As with all efforts in the area of integration and schooling, the IRS guidelines are being contested energetically. But the new regulations probably will reduce the siphoning-off effect of private schools either somewhat or a great deal. An indication of how southern school integration has evolved may be found in Little Rock and Charlotte. Little Rock, where we once had a minirevolution over school integration, and Charlotte, where busing got its start, are now tranquil, well-integrated school systems, as free from troubles, racial or otherwise, as public schools will ever be.[8]

Factors Inhibiting Transition

In the large southern cities the effect of desegregation orders is less sweeping. Those cities are, of course, subject to *Brown v. Board of Education* because they once segregated

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pursuant to state law. But a variety of factors have combined to make integration there more difficult to achieve. First, in some areas federal judges have been less than vigorous in their enforcement of *Brown*. Continuous litigation has failed to integrate such places completely, or private legal resources to pursue the effort have been lacking. There is a limit to how much time, energy, and attention lawyers can put into a school district that continues to fight back and that the judges are less than eager to reform. In a very few places some segments of the black community have become tired of struggling and been willing to settle for more modest goals of material enhancement and more jobs for teachers.

In still other sections, the familiar city-suburban division has located whites far from central-city ghettos where the black children are. The Supreme Court in one case involving Richmond, Virginia,[9] and another involving Detroit,[10] has refused to require integration across that boundary, absent circumstances called "interdistrict violation." But this refusal may turn out not to be the rule: although litigation continues, Wilmington, Delaware,[11] and Indianapolis, Indiana,[12] have court-ordered, cross-district integration, as does Louisville,[13] where the issue appears to be settled. In some places, as in Florida, there is no district boundary between city and suburb, and integration between the areas has not been a legal problem.

The racial concentrations in southern big cities resemble the situation that exists even more widely in the North. First, northern areas typically have not had statutes creating *de jure* segregation amenable to attack via *Brown v. Board of Education*. The Supreme Court held in the Denver school case[14] that, to require desegregation in a district where there has been no such statute, one first must show that racial separation took place as a result of some official action of school officials. Such proof is not always possible, and then not always possible to show easily. School board minutes, decisions about locating and constructing schools, transfer regulations and decisions, demographic trends, and countless other bits of evidence must be pieced together to make the necessary demonstration. Then, even if it might be made, the task may prove to be too difficult or expensive. To make the job even more burdensome, the Supreme Court recently has uttered the cryptic requirement that even where there has been *de jure* segregation of this nature, the courts may only undo the incremental segregative effect that it brought about, whatever that means, not segregation that occurred naturally or adventitiously, if, indeed, it ever does occur that way.

So the North starts without statutes on which to base school cases, demands proof hard to come by, and offers relief inscrutable to those who seek to achieve it. And one cannot say of the North, as of the South, that there is substantial integration in rural areas and small towns, because northern black citizens typically live in big cities.

To these impediments to school integration we might add the massive size and extensive racial concentrations of some of the nation's largest cities and the political opposition that one way or another translates itself into judicial refusal to act, or decision to act only modestly. Annual riders to Department of Health, Education, and Welfare legislation[15] forbidding busing to some extent are commonplace. The courts on most, but not all occasions, have struck down or interpreted away these hobbling rules, but they have had their inhibiting effect.

The United States Commission on Civil Rights made the following observation in a study of forty-seven school systems:

> The picture that emerges from this review of the status of school desegregation in 1978 is far from clearcut. On the one hand, there are communities throughout the land where desegregation is working. Communities that have been divided over the issue are emerging as stronger communities as leaders from all walks of life work out constructive solutions to difficult educational problems. Children and young persons are being provided with genuine opportunities to obtain an education that will help prepare them to live in a pluralistic society. Equality of educational opportunity is beginning to take on real meaning. Some examples of communities that fall into

this category out of the 47 on which we have reports are: Charlotte-Mecklenburg, North Carolina; Denver, Colorado; Providence, Rhode Island; Tampa, Florida; and Tacoma, Washington.

On the other hand, there are communities that have employed a variety of devices to prevent, obstruct, or slow down desegregation. Some of these communities have started or will start the desegregation process this school year. Examples of such communities out of our sample of 47 include Cleveland, Ohio; Indianapolis, Indiana; Los Angeles, California; and New Castle County (Wilmington), Delaware.

In other cities, the obstructionist tactics of the last 10 to 15 years continue to block any meaningful school desegregation progress. Examples of such communities in our sample include Buffalo, New York; East Baton Rouge Parish, Louisiana; and Pittsburgh, Pennsylvania. Each year of delay, of course, is another year of denial of equal educational opportunities to many children and young people.[16]

Some Benefits of Integration

Despite the patchy, incomplete, and inconsistent moves toward school integration, the movement will continue for a variety of reasons. Optimism or pessimism, of course, depends not only on perceived facts, but on one's own temperament. But I think enough has happened to encourage the feeling that we still are moving toward one society and that schools will be a part of that development.

First, it seems to be settled that racial integration is an educationally beneficial experience. Despite our Little Rocks and Bostons, despite the sensationalism that dominates every controversy that exists in our society, a body of evidence has been growing steadily to show that, generally, integration benefits black children in school achievement and does white no harm. Crain and Mahard's[17] definitive review of all the studies on the subject states unequivocally that white test performance is unaffected by desegregation. As to the effect on black children, they report the "consistent finding of the studies that black achievement is higher in predominantly white schools."[18] They acknowledge a dispute over how large an effect must be to be considered positive, but argue that closing one-fifth of the gap--the improvement the Coleman report showed--is not inconsequential. That is approximately one grade level. But they do point out that the level at which integration takes place, its duration, the composition of the student body, and other factors are all important to the outcomes.

Crain and Mahard also make an extremely important point--that whether we should integrate schools ought not to turn exclusively on test score results. Nevertheless, since everyone looks to these results, they should not be an impediment.

I am not equipped to enter the contest that will continue for a long time to come among the experts on the consequences of desegregation for test scores. One may conclude, however, that the evidence compiled by Crain and Mahard offers reason to believe that opposition to desegregation will not be pursued vigorously on the ground that it damages white children's education or that it does not improve black education.

That surmise is reinforced by recent Louis Harris public opinion polls on the subject of racial attitudes.[19] Harris reports that "no more than 16% of all whites favor segregation," at least in general principle.

> Over the past 15 years the number of whites who would be disturbed at having a black family as a next door neighbor has dropped from 51% to 27%, the number worried over their child bringing home a black child to supper has gone from 42% to 20% . . . the number of whites who feel that blacks are inferior to whites has dropped from 31% to 15% since 1963. . . . part of the reason for this change is that white contact with blacks has increased appreciably over the same period: having a black co-worker on the

> job, up from 32% to 49%, having a black social friend, up from 20% to 40%, having a black neighbor, up from 10% to 16%. Sizable majorities of both blacks and whites report that these personal relationships have been both pleasant and easy.

Turning to education, the attitudes present an interesting dichotomy. Blacks and whites who have not experienced desegregation by means of busing oppose it, but those who have had the experience by and large have a favorable view of it. If one were of optimistic temperament, like me, one might conclude that the statistics augur well for continued integration, by means of busing and otherwise. Harris reports:

> although a narrow 43-42% plurality of blacks oppose the idea of busing and a lopsided 85-9%majority of whites feel the same, among the 35% of all black families who have children bused and 10% of all whites whose children have been bused, the experience of busing turns out to be quite different from the expectation. A sizable majority of 63% of blacks involved in busing say it was very satisfactory, while another 25% say it was partly satisfactory, with only 8% reporting it was unsatisfactory. Among whites whose children have been bused, 56% report it highly satisfactory, 23% partly so, and no more than 16% unsatisfactory.

And Harris reports that "significantly, a 53% majority of whites have convinced themselves that within five years 'most black and white children will be going to school together'."

If we take a look at higher education—at the so-called *Bakke*[20] issue—for a moment before leaving the Harris findings, two conclusions are prominent:

> by 71-21% a solid majority of whites are now convinced that "after years of discrimination, it is only fair to set up

> special programs to make sure that women and minorities are given every chance to have equal opportunities in employment and education.

As Harris points out, blacks and whites hold other attitudes that in part contradict or modify the ones I have reported. But in areas of great social complexity about which strong feelings are held, nothing will ever be completely clear. What is important is that the impetus in the direction of greater integration exists.

Moving from attitudes to social conditions, the United States Commission on Civil Rights report on Social Indicators[21] points out that between 1960 and 1976 the high school completion rate for black males went from 59 percent in 1960 to 71 percent in 1970 and to 85 percent in 1976,[22] and the college completion rate went from 20 percent in 1960 to 27 percent in 1970 and to 32 percent in 1976.[23] At present the college enrollment--not completion--rate for blacks is just about what it is for whites, indicating that the college completion rate gap is closing further.

Now all this is not solely the work of the courts. But it is inseparable from what courts have done and would not have occurred without the Supreme Court's decision in *Brown*.

The Judiciary's Role in Educational Progress

The role of the courts with respect to schools has not stopped with racial integration. It has operated across virtually everything educators do. And I would like now to turn to a few of the other school issues in which the judiciary has had an important role.

First let us take a look at bilingualism. Bilingual education is not new to America, but it never before has been as widespread as it is now. And the recent surge is, of course, traceable directly to the Supreme Court's decision in *Lau v. Nichols.*[24] In 1974, the Supreme Court, in an opinion by Justice Douglas, held that a school district that receives federal financial assistance violates Title VI of the Civil Rights Act of 1964 if it fails to establish a program to deal with Chinese-speaking students' difficulties in learning arising from the fact that instruction is conducted only in English. Justice Douglas wrote:

> There is no equality of treatment merely by providing students with the same facilities, textbooks, teachers, and curriculum; students who do not understand English are effectively foreclosed from any meaningful education. . . .
>
> Basic English skills are at the very core of what these public schools teach. Imposition of a requirement that, before a child can effectively participate in the educational program, he must already have acquired those basic skills is to make a mockery of public education. We know that those who do not understand English are certain to find their classroom experiences wholly incomprehensible and in no way meaningful.[23]

Of course, *Lau* did not mandate bilingual education as the only way to deal with the problem. It might be that intensive instruction in English or a variety of other techniques would fulfill the requirement of the opinion. And, it might be noted that *Lau* interpreted and applied a statute in HEW regulations; it did not declare a constitutional imperative. Nevertheless, it was the major impetus to bilingualism, which other courts subsequently have mandated, principally in cases involving Hispanic children.

As with integration, one can find a plethora of scholars and political figures in dispute over whether bilingual education is better than other methods of teaching non-English-speaking children. Also as with integration, a variety of ideological and practical factors come into play. Some argue for bilingual education on the ground that it permits biculturalism and that, indeed, it should be continued even after children master English to assist them in preserving their heritages. Others argue this would be divisive and create a separatist spirit in America, as in Canada's Quebec. Some argue that children learn no better or that they learn worse as a result of bilingual education. Some are less interested in educating children than in reserving jobs for teachers of certain national origins.

The law has gone beyond race and language and is having an important impact on how schools treat children differently because of sex. Title IX of the Education Amendments of 1972[26] requires sexual equality (not precisely defined) in education. Although the courts have not yet played a meaningful role in school sex-equality cases because the rules are statutory, the rules themselves do stem from the general movement toward equality initiated by *Brown*. And there will likely be judicial opinions soon enough.

The major issue, certainly as a publicity getter and first to catch the public's attention, is the requirement that athletic programs be offered without regard to sex. If, as has been argued, sport is good because it develops character, health, initiative, associations that remain with one for the rest of one's life, and so forth, how can boys and girls receive equal education if boys have extensive and expensive sports programs and girls have insignificant and scanty ones? HEW is grappling with how one provides equality in volleyball, basketball, cheerleading, and so forth. A lot of high mirth has been and will be generated, but the issue is important. When serious interests are challenged, such as whether fortunes may be spent on intercollegiate football for boys while pittances are spent for girls, the issues will move quickly from HEW regulations to hearings and to courtrooms.

I will mention only a few other areas in which the law and the courts have had and will be having an even more important impact on the schools. Handicapped and mentally retarded children now, for the first time by statutes and judicial decisions, are receiving recognition of their right to equality of education. The Education for All Handicapped Children Act of 1975[27] was passed "to make available to all handicapped children a free appropriate public education which includes special education and related services to meet their unique needs." It defines handicapped children "as being mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, deaf-blind, multi-handicapped, or as having specific learning disabilities, who because of those impairments need special education and

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related services."

The act is full of procedural protections. It requires that an individualized education program be developed for each handicapped child. And even if the state does not participate, the Vocational Rehabilitation Act of 1975[28] requires that any qualified handicapped person be provided a free, appropriate education if the state's educational program receives federal financial assistance. Moreover, there has been constitutional recognition of the right to rehabilitation of the mentally retarded.

I will only mention and not discuss the requirement that equality be provided to those laboring under physical handicaps.

The Supreme Court has declined to enter the field of school funding in the *Rodriguez*[29] case, but state courts in California,[30] New Jersey,[31] and New York (not yet reported), at least, have prescribed that under their own constitutions allocation of funds to schools must be more nearly equal than it now is, causing revolutions in school financing in those states.

Teachers and principals once could discipline children as they thought best without regard to due process protections. But the courts now have mandated that the more far-reaching the suspension the more careful must be the procedure.[32]

I could go on and on, discussing corporal punishment,[33] free speech on school grounds by pupils and teachers,[34] teacher tenure,[35] tracking,[36] religious education,[37] and many other subjects that have been taken out of the sole purview of school boards, principals, teachers, or even superior legislative bodies like state legislatures and the Congress of the United States.

Many of us would prefer to think of schools as governed by locally elected boards of education whose policies are applied by professional educators. Overall policies may in some situations be mandated by state legislatures or the Congress. Critical intervention by judges or even by legislatures implementing judicial requirements, or perhaps inspired by them, contradicts the democratic image. But that is what is happening. Therefore, it may be worthwhile to consider whether it is good or bad that courts have had so much to say about the ends and means of American education.

It will come as no surprise that I think judicial intervention generally has been a good thing. It would have been unthinkable for the school segregation cases to have been decided against the plaintiffs. That is not to say that courts have not made mistakes or not been awkward and ineffective in pursuing goals. But what American institution, particularly a political institution, has been an example of unalloyed efficiency and success? Courts have done better than most.

The reason is that our elected leaders too often suffer from inertia. They do not readily rise creatively or effectively to fresh challenges. They are too frequently in a state of equilibrium between contending factions. They may be dominated by a single political party, social or educational class, civil service bureaucracy, labor unions, business interests, or other groups whose control belies the fanciful image of town meeting democracy. Paradoxically, the courts acting at the behest of public interest lawyers have provided voices for the disenfranchised--for those to whom the political system does not respond.

This role now has been widely recognized. As Justice Brennan wrote in *NAACP v. Button*:

> In the context of NAACP objectives, litigation is not a technique of resolving private differences; it is a means for achieving the lawful objectives of equality of treatment by all governments, federal, state and local, for the members of the Negro community in this country. It is thus a form of political expression. Groups which find themselves unable to achieve their objectives through the ballot frequently turn to the courts. Just as it was true of the opponents of New Deal legislation during the 1930's for example, no less is it true of the Negro minority today. And under the conditions of modern government, litigation may well be the sole practicable avenue open to a minority to petition for redress of

grievances.[38]

Congress has encouraged access to the courts in similar ways, by authorizing counsel fees in public accommodation,[39] employment,[40] housing,[41] school segregation,[42] and certain consumer cases;[43] by allowing organizations, as distinguished from injured individuals, to bring proceedings before the Equal Employment Opportunity Commission[44] and the Department of Housing and Urban Development;[45] and most significantly, by funding the Legal Services Corporation, which provides legal services for the poor, particularly backup centers, whose most important activities have been to conduct litigation campaigns with the aim of making precedent. Minority-group and public-interest legal operations receive the subsidy of federal tax exemption. The largest and most prestigious foundations, as well as a number of smaller ones, support a variety of minority-group and public-interest law efforts, almost exclusively those that seek to make law rather than enforce it. The nation's leading law firms have donated time and funds to such efforts.

Nevertheless, it is argued that the judiciary is not democratic and that in our form of government the people's will should be pursued only through elected officials. It is said that judges are appointed for life, come from a narrow sector of society, and are lawyers who are not attuned to the needs of the people. It is also said that courts cannot engage in the political process of compromising and weighing alternatives.

But courts are not all that undemocratic or unresponsive. Presidents who appoint federal judges and those who appoint or designate state judges reflect political viewpoints in the judicial selection process. When courts interpret statutes or the federal and state constitutions, there is plenty of scope within which the legislatures or Congress can respond in support or opposition, whether concerning school finance, busing, education for the handicapped, or other areas. Moreover, while it overstates the case to say that the Supreme Court follows the election returns, it does more or less reflect the moral outlook of the times.

And so just as the decisions of elected officials do not always fully reflect democratic preferences, the decisions of judges are not always nondemocratic choices.

It is more fitting that the judiciary has had such influence in the area of education than in any other fields in which the courts function. I would like to think that John Dewey--that great figure in American education and philosophy--would be pleased if he could see what courts have accomplished in recent years. He was an instrumentalist, one who believed in empiricism based on a concept of experience that combined the naturalistic bias of the Greek philosopher with appreciation for the experimental methods of the sciences. His theory of inquiry was one of an ongoing self-corrective process. And that is what the courts have been doing--trying, responding, adjusting.

As Irwin Edman, whom I was fortunate enough to have as a teacher, has written of Dewey:

> He time and again reminds us, too, that governments, laws, social institutions, arts both "fine" and "useful" are all complex active processes always in process of change. These changes generate conflicts between old habits and new situations. These conflicts generate suggestions of the needs and of the possibilities of directing changes toward solutions. The key to meaningful life is growth; the constant alertness to, the freshening, the reshaping, the remaking of experience. The enemy of life (and its opposite) is rigidity and blind resistance to change. The function of intelligence is to be alertly critical of outmoded methods in society, in government, in feeling, in thought. This alertness applies also to those tendencies in human institutions and governments and laws and customs which render life more meaningful, more alive, and at once more integrated and more varied.
>
> Among the enemies of life is social isolation, the rigidities that separate classes into stereotypes, races and social castes. The activity of creative intelligence functions best where there is a genuinely free interplay among individuals, a society where the life of each is

> challenged, varied, fructified by contacts
> with the lives of others.[46]

Conclusion

The courts have been launching probes into areas of education that too often have defied efforts at change without judicial intervention. Who could imagine the initiatives in all the areas I have mentioned--from integration to discipline to school finance--without judicial stimulus? Where that effort has been wanting or excessive, or on the other hand right and productive, it generally has been a first-time response to the claim of American ideals.

Now, it may be argued that such an argument could support the basest, most mindless type of judicial intervention; or indeed any intrusion into the education process at all. But that is not what, I think, Dewey would have meant. The courts have acted in pursuance of American ideals, not venally or in random fashion. They have acted according to fair procedures. They have not intended to do nor have they done harm, although in isolated instances that charge might be made. They stand subject to correction, as we learn, empirically, instrumentally, if you will. That, I submit, is in the interest of all of us, particularly if we want our society and system of education to function dynamically. Courts may not always be right or best, and when they are not, the people say so. But the impact of courts on schools has made us richer. We would be less of a country and diminished in our self-esteem but for the judicial intervention of the past twenty-five years.

Footnotes

1. 347 U.S. 483 (1954).
2. U.S., *Constitution*. art. I, sec. 2, cl. 3.
3. G. Myrdal, *An American Dilemma*, Vol. 2 (1962), p. 560.
4. O. W. Holmes, *The Common Law* (1881).
5. 163 U.S. 537 (1896).
6. Roberts, "Black Progress and Poverty Are Underlined by Statistics," *New York Times*, 28 February 1978, p. 22, col. 1.
7. *Id.*
8. U.S. Commission on Civil Rights, *Desegregation of the Nation's Public Schools: A Status Report* (1979).
9. Bradley v. School Bd. of Richmond, 412 U.S. 92 (1974).
10. Milliken v. Bradley, 418 U.S. 717 (1974).
11. Evans v. Buchanan, 423 U.S. 963 (1975).
12. Board of School Comm'rs, City of Indianapolis v. U.S., 429 U.S. 1068 (1977).
13. Newburg Area Council, Inc. v. Board of Educ. of Jefferson Cty., Kentucky. 510 F.2d 1358 (6th Cir. 1974), *cert. denied*, 427 U.S. 931 (1975).
14. Keyes v. School Dist. No. 1, 413 U.S. 189 (1973).
15. Esch Amendment, 20 U.S.C. § 1714; Byrd Amendment, Pub. L. No. 94-206, § 209, 90 Stat. 22, reenacted as Pub. L. No. 94-439, § 208, 90 Stat. 1434; Eagleton-Biden Amendment, Pub. L. No. 95-205, 91 Stat. 1460.
16. U.S. Commission on Civil Rights, *supra* note 8, at 72.
17. Crain and Mahard, "Desegregation and Black Achievement," (working paper, Institute of Policy Sciences and Public Affairs, Duke University, n.d.).
18. *Id.* at 5.
19. The following text is derived from *A Study of Attitudes toward Racial and Religious Minorities and toward Women*. Prepared for The National Conference of Christians and Jews, November, 1978. Conducted by Louis Harris and Associates, Inc.
20. University of California Regents v. Bakke, 438 U.S. 265 (1978).
21. U.S. Commission on Civil Rights, *Social Indicators of Equality for Minorities and Women* (1978).
22. *Id.* at 12.

23. *Id.* at 14.
24. 414 U.S. 563 (1974).
25. *Id.* at 566.
26. Education Amendments of 1972, Pub. L. No. 90-318, 86 Stat. 235.
27. Education for All Handicapped Children Act of 1975, Pub. L. No. 94-142, 89 Stat. 773.
28. Vocational Rehabilitation Act of 1975, Pub. L. No. 93-608, § 1 (8), 88 Stat. 1968.
29. San Antonio Indep. School Dist. v. Rodriguez, 411 U.S. 1 (1973).
30. Serrano v. Priest, 487 P.2d 1241 (Cal. 1971).
31. Robinson v. Cahill, 303 A.2d 273 (N.J. 1973).
32. Goss v. Lopez, 419 U.S. 565 (1975).
33. Ingraham v. Wright, 430 U.S. 651 (1977).
34. Tinker v. Des Moines School Dist., 393 U.S. 503 (1969).
35. McSherry v. City of St. Paul, 277 N.W. 571 (Minn. 1938).
36. Hobson v. Hansen, 269 F. Supp. 401 (D.D.C. 1967), *aff'd*, 408 F.2d 175 (D.C. Cir. 1969); *Cf.* Milliken v. Bradley, 418 U.S. 717 (1974).
37. McCollum v. Board of Educ., 333 U.S. 203 (1948); Zorach v. Clauson, 343 U.S. 306 (1952).
38. 371 U.S. 429 (1963).
39. 42 *U.S. Code* § 2000a-3(b).
40. 42 *U.S. Code* § 2000e-5(b).
41. 42 *U.S. Code* § 3612(c).
42. 42 *U.S. Code* § 2000 C-8.
43. 15 *U.S. Code* §§ 1640(a) (2), 1681 (n) (3), 1681 0(2).
44. 42 *U.S. Code* § 2000e(a).
45. 42 *U.S. Code* § 3602(d).
46. I. Edman, *John Dewey* (1955), p.31.

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Tension Between the Law and Social Science: An Expert Witness's View*

Thomas F. Pettigrew
Harvard University

Lessons from Experience

The abrupt jangle of a telephone call after midnight back in the mid-1960s introduced me to the use of social science testimony in public school desegregation litigation. The call came from a lawyer of the National Association for the Advancement of Colored People (NAACP), now a federal judge. He wanted me to testify the next morning in the desegregation case he was engaged in bringing against the public school system of Springfield, Massachusetts.[1]

I recall this initiation by fire vividly, because the experience gave me a crash course in the subtle complexities of the link between social science and the law. Put more directly, the experience taught me many of the things expert witnesses should and should not do. At the time of the call, I had never participated in a court case of any kind. Like most social scientists of the period, I was proud of the modest contribution made by social science in the 1954 Supreme Court ruling against educational segregation by race. And I had read articles concerning this involvement by Kenneth Clark (1953) and other leaders of the field who had participated. But obviously I was naive in the extreme, and so I unhesitatingly made my first mistake. I accepted the invitation.

The acceptance of the assignment was a mistake for many reasons. Although a specialist in American race relations and problems of racial desegregation, I was not familiar with the details of the particular case. Nor had I been able to shape the NAACP's brief to make its legal arguments more amenable to social science theory and research. Briefed on the case in the elevator on the way to the federal district courtroom, I was not prepared to give the type of helpful expert testimony that courts deserve and should demand from social scientists. I could testify only in general terms as to the available social science work on the subject without detailed application to Springfield and the specific points at issue. I survived the cross-examination only because the defense counsel appeared to be almost as unaccustomed as I to this type of litigation.*

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The Springfield experience made me understandably cautious about further appearances as a court expert. Indeed, many social scientists, after one bruising encounter with the adversary system, never return to the witness stand. But I realized that my education on the subject was woefully incomplete, and some years later did agree to continue it in the desegregation case involving the public schools of Norfolk, Virginia.[2] This case marked my only experience as a witness called by a recalcitrant school system; thus, it provided me with a view from the defendant's side of the courtroom.

The lawyers for the Norfolk schools approached me knowing that my work and views made me an unlikely defender of the continued racial segregation of their public schools. But they correctly deduced that I could provide testimony against a rigid application of a "racial balance" formula, that is, a requirement that each school in the system reflect within narrow limits the precise racial proportion of the entire system regardless of what that proportion might be. I did, and still do, oppose such a formula on both theoretical and practical grounds. Stated briefly, such a rule ignores the internal dynamics of individual schools as integumented institutions, leads to widespread tokenism in districts with only small proportions of students of one or another race, and limits the ability later to argue for the need for metropolitan approaches to public school desegregation.[*]

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*This situation is not unusual. Civil rights lawyers who are constantly engaged in these cases become extremely adept in their subtleties. But defense lawyers are often locally based, serve as general counsel to the school board on a wide range of issues, and have not been deeply involved previously in school desegregation litigation.

In truth, I was reluctant to serve as an expert witness again. But I had earlier concluded (after studying 1950-to-1960 population trends from census data) that metropolitan approaches offered the only means of long-term, stable, equitable public school desegregation in a great many American cities, including Norfolk. And my concern that a precedent for a rigid application of a racial balance rule, as sought by the plaintiffs in the case, would impede all future metropolitan efforts prompted me to participate.[†] My differences with the plaintiffs' lawyers' argument, then, involved both the time dimension and the need for a new metropolitan strategy. They wished to win their immediate case decisively; I believed that the argument for metropolitan strategies had to be kept strong. We shall return to this difference in perspective that often arises between lawyers and social scientists.

This time, I studied the case carefully in advance; and I set aside a reasonably large block of time for the commitment. My testimony centered on the evidence for the desirability of 20-to-40 percent black schools, and on the need to extend the case to the bordering white communities of Virginia Beach and Chesapeake City in order to achieve this proportional range throughout the area's schools.

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[*] Considerable confusion exists in popular thinking about "racial balance." In the sense used here, it has actually never been adopted by federal judges. Some observers mistakenly think *Swann* established the racial balance concept; actually the Supreme Court ruling held "mathematical ratios" permissible as "a useful starting point in shaping a remedy," but not required by the Constitution (Swann v. Charlotte-Mecklenberg Bd. of Educ., 402 U.S. at 24, 25). Moreover, the district court has in practice allowed the Charlotte-Mecklenberg school system to vary its black pupil percentages widely.

[†] The reasoning underlying this concern is straightforward. If the District of Columbia's public schools, for instance, could be adequately "desegregated" in the eyes of the law once it spread its 4 percent of white students evenly across all its schools, then there would be no further legal argument that a metropolitan plan involving the heavily white suburban districts is necessary.

The Norfolk experience taught me two more valuable lessons. First, it is not enough just to be well informed about the case in order to contribute maximally as an expert. The social scientist should be in on the case from the beginning to shape its form toward issues that social science can address competently. Second, testimony can be easily distorted beyond recognition, first by the trial lawyers straining to win every relevant point and then by judges who read only the briefs and not the direct testimony. We shall return to the first point shortly; but the second deserves illustration.

Under cross-examination, I testified that I knew of no data or even theory relevant to the question of what would comprise an ideal social class mix of students in a school. Nonetheless, one of the plaintiff's attorneys twisted his summary of my testimony for review by the Fourth Circuit Court of Appeals in Richmond to indicate that I had advocated that all racially mixed schools must be predominantly middle-class schools, thereby denying access to interracial education for many lower-status black children in Norfolk. The aim was to discredit my entire testimony. This twisted version was then seized on by a conservative member of the court as a solid "scientific" point that necessarily must restrict all future school desegregation. And as a counter, this version of my testimony was blasted as immoral or worse by a late liberal member of the court whom I had long admired. Neither jurist had apparently actually read my testimony, which is understandable given the enormous volume of material that passes before them. But the gross distortion lives on, even in a recent review of "the use of social science evidence" in school desegregation litigation (Levin and Moise 1977, pp. 93-96). The moral of the story is simply that expert witnesses cannot afford to be thin-skinned. The adversary procedure lends itself to distortion of testimony without allowing for the type of corrective rebuttals to which social scientists are accustomed.

The next case in which I participated provided a control comparison of the court's response to virtually the same social science testimony in a different context. In *Bradley*,[3] an attempt was made by both the Richmond, Virginia, school board and the NAACP Legal Defense and Education Fund to expand a central city desegregation plan to include the surrounding and overwhelmingly white suburban counties of Henrico and Chesterfield. As a witness for the Richmond schools, my same reasoning in favor of a metropolitan approach was now ignored by the conservative jurist on the Fourth Circuit who had previously embraced it but who now rejected Richmond's attempt to establish a metropolitan solution. Understandable as such a switch may be in the light of shifting legal contexts, it still does not reassure a layman concerning the operation in practice of the "neutral principles" of the law.

The Richmond metropolitan case marked my first experience as an expert witness where I thought my testimony actually constituted a small contribution to the deliberations. Two related reasons were responsible for this. Richmond, Virginia, is my hometown; I was born and raised there and am a product of its public schools. The advantage of literally being on "home ground," plus the fact that I was asked to participate in this case as it was being formed combined to enable me to be far more effective. My experiences in Springfield and Norfolk, as well as long-term consulting with the staff lawyers of the United States Commission on Civil Rights, had impressed on me the need to be able to shape the case in subtle ways so as to allow maximum relevance of social science evidence.

This observation is not to advocate that social scientists actually participate in brief writing. But it is to emphasize that the early involvement of social scientists is essential for a variety of reasons. The legal and social science "intellectual maps" are sharply different, as we shall discuss in the next section. This fact makes "the fit" between them vital but difficult. Often the same legal point can be drafted in any one of several ways, all of them equally meaningful in legal terms but only one of which allows directly relevant social science evidence. Likewise, the same social science conclusion can have diverse legal implications depending on its phrasing and context. Early involvement of the expert witness, then, allows this "fit" between the two fields to be made in the underlying fabric of the brief's argument. Such involvement also allows the lawyers and the social scientists to get to know one another. The lawyers can achieve a more realistic idea of what their future witnesses can and cannot do for the case, while the social scientists learn about the deeper legal points at issue and how their testimony relates to these points. In fact, long-term relationships are probably generally necessary for effective applied social science work and consulting in any area—not just the law (Pettigrew 1971).

The limiting resource becomes time. Long-term relationships require commitments of time beyond those typically allocated by both trial lawyers and social scientists for expert testimony. Indeed, the belief that such long-term commitments are essential has restrained me from being an expert witness in any case since the Richmond metropolitan effort. But I did accept in February 1978 a new role in a school desegregation case, a role even more demanding of time. Judge Paul Egly, of the California State Superior Court for the County of Los Angeles, named eight experts--seven social scientists and a lawyer—to study and report on public school desegregation in Los Angeles in the long-standing case of *Crawford*.[*]

This role has proved to be the most interesting and satisfying of all. Interesting because it has provided a new view of the adversary system, a view that will be detailed in the next section. Satisfying because it is far closer to the role academic social scientists are accustomed to playing--researchers and writers rather than direct disputants in an argument. Judge Egly asked each of the eight experts to address five questions that he considered central to the case:[4] How can still-segregated minority schools be reached by future desegregation plans? How should the present plan be expanded by grade? What about so-called "white flight" and its implications for a desegregation plan? What would constitute a viable and effective definition of a "desegregated school" in the multigroup situation of Los Angeles? And, finally, how do bilingual issues intersect with school desegregation? In short, the judge wished the experts to provide him with answers and suggestions on concrete matters of immediate concern to an effective desegregation program for sprawling Los Angeles. Yet these questions relate directly to social science research and theory, and they have a generic quality that makes them relevant to most desegregation efforts thoughout the entire nation.

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[*] Crawford v. Board of Educ. of the City of Los Angeles, Case no. 822 854, Superior Court of the State of California for the County of Los Angeles. The other seven experts are Professor Beatriz Arias, School of Education, University of California at Los Angeles; Dr. Robert Crain, Rand Corporation; Professor Reynolds Farley, Population Studies Center, University of Michigan; Dr. Bernard R. Gifford, Russell Sage Foundation; Dean Elwood Hain, San Diego Law School; Professor Gary Orfield, Political Science Department, University of Illinois at Urbana; and Professor Francine Rabinovitz, University of Southern California.

The experts met with Judge Egly and most of the trial lawyers in March 1978; it was then that the social scientists began to acquire new insights into the adversary system. This bold means of introducing social science evidence into the litigation acted to reverse roles. The trial lawyers were as "at home" within the adversary system as the social scientists were alien to it. But now that a more familiar role had been established for the experts, it was the lawyers' turn to grow uneasy and suspicious. They were particularly uneasy about the prospect of having relatively unfettered experts influencing the all-important judge beyond their purview. So it was soon agreed that the experts would not communicate directly with Judge Egly. Rather the eight would deal strictly with the various parties to the case and with the court-appointed referee for *Crawford*, Professor Monroe Price of the Law School of the University of California at Los Angeles.

This structural arrangement appeared to work well. While they undoubtedly remained uncomfortable, the lawyers for all the many parties involved cooperated fully with the experts in all respects, including data gathering and the exchange of opinions. I benefitted especially from frank, three-to-four-hour separate sessions with almost all the many lawyers and their clients. These discussions included a friendly session with the legal representatives of the city's leading antibusing organization (Bustop), who had vigorously opposed in court my nomination as an expert. We candidly discussed at length the basic facts of the case with broad agreement even if from two contrasting value stances. At the close of our session, one of the Bustop attorneys allowed in a moment of weakness, "You don't really have three heads after all!"

Interviewing all sides, learning the conflicting perspectives of the various parties, and assembling the relevant data are, of course, the stock and trade of social scientists and easily account for why the group of experts felt comfortable in their court role. But the test of the Los Angeles experiment ultimately comes down to the value of the eight separate reports filed with the court. Although we were not to act as a collective panel, we did meet as a body for one day each in March, July, and September and differentiated our large task along lines of special competencies. Bilingual issues, the institutional and operating structure of the school district, and school finance each received individual attention. And following an expression of interest by Judge Egly in metropolitan approaches, a number of the experts focused on the legal, demographic, housing, and design issues involved in both district and metropolitan school desegregation.

The reports of the eight experts, totalling almost one thousand pages of text, maps, charts, and documentation, were released in November 1978. They received immediate and widespread attention by the mass media. As might be expected, much of the attention was sensationalized. The archly conservative *Los Angeles Herald Examiner* editorially labeled the experts "elitists" and distorted the conclusions of the reports beyond recognition. The *Los Angeles Times*, by contrast, covered the reports carefully and accurately, even reprinting whole sections on their "opposite-editorial" page. Most of the attention centered on the numerous recommendations for metropolitan approaches, attention that aroused from many suburban whites an angry furor resembling the reaction of some southern communities in the 1960s.

The experts may be called later to be examined in court on their reports; and the Los Angeles Board of Education is seeking to provide expert testimony against the report's recommendations. So it remains to be seen how much influence, if any, this work will have on the case's final determinations. So far, the public discussion of school desegregation in Los Angeles, while heated, appears to have broadened since the reports were issued. And Reynolds

Farley's predictions of the first-year loss of Anglo students proved accurate. In any event, Judge Egly's experiment did, perhaps, make the most extensive use of social science evidence of any school desegregation case yet. Even if its results may be less than extensive, it provides a model for how social scientists might be more fully utilized in this type of litigation. The use of experts by the court, of course, was not novel. As Kalodner (Kalodner and Fishman 1978, p. 19) points out, "federal judges presiding over desegregation cases have generally felt the need, at some point in the litigation, for expert advice independent of plaintiffs' and defendants' experts." But the use of a team of experts from a range of diverse specialties dealing directly and openly with all parties and away from direct communication with the judge may constitute an important variation. It contrasts, for example with the model envisioned by Kalodner (Kalodner and Fishman 1978, pp. 19-20) of a single court expert appointed early in the case and operating largely within the judge's chambers.

The Basic Tension between the Law and Social Science

There is a basic tension between the law and social science, as illustrated by the four cases described above. In summary terms, there is necessarily tension between the law's predominant mode of logical positivism and social science's predominant mode of empirical positivism. And this tension has often hindered courts from benefitting optimally from social science evidence. But there is reason for believing that this same tension could be put to positive use if it were specified and recognized by both institutions. Toward this end, I would like to advance a first approximation at specifying four interrelated elements that compose this tension: (1) contrasting conceptual definitions, (2) differences in preferred scope, (3) different frameworks, and (4) conflicting operational environments. Let's consider each of these elements briefly.

Contrasting Conceptual Definitions

At the most basic level, the two disciplines conceptually "map" their domains in radically different ways. Each has its own specialized vocabulary and derides the "unnecessary jargon" of the other. Much of this difference can be surmounted by experience; this is one of the reasons why long-term contact between lawyers and social scientists is urged throughout this paper. But far more is involved here than the mere learning of a new vocabulary. The difficult problems revolve around fitting the two conceptual schemes together in reference to the particular set of facts of a given case. Underlying this "fit" issue are problems of both the preferred scopes and admissible frameworks of the two fields, problems that we touch on below. Here we raise the lowest-level problem of identical concepts conveying contrasting meanings to lawyers and social scientists.

Consider the consequences of the differential meanings of "expert" and "evidence." Social scientists are usually surprised at the lower standards these concepts generally convey under the adversary system. There are, for example, social scientists who, while often quite reputable in their chosen specialties, have little or no expertise in race relations that would be recognized within social science; yet they routinely qualify as "experts" in desegregation cases throughout the nation. And qualification as an "expert" in one case aids qualification as one in the next. Understandable as these lower standards are under adversary assumptions,* they have had negative consequences for the quality of social science testimony for both plaintiffs and the defense in these cases.

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*One assumption of the adversary system has been called particularly into question. Some observers believe that only the plaintiffs have had access to social science testimony because of the liberal political leanings of the field. Thus, the assumption that each side has an equal chance to supply expert testimony and rebuttal is dangerously vitiated. But this view does not stand up to an inspection of the facts. Social science testimony has been advanced by defendants throughout the history of these cases during the past generation. Virginia, one of the original defendants in the 1954 litigation, employed supportive testimony from a clinical psychologist and a psychometric psychologist, the latter a former president of the American Psychological Association (Clark 1953). Nor have only political conservatives been available

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There is an uncharacteristic expansiveness of many social science witnesses once they discover the flattering fact that their opinions are being regarded as "evidence." This same tendency toward expansiveness often causes problems when social scientists deal with the mass media (Pettigrew and Green 1976). Lawyers sometimes think that this sweeping style is the way academic social scientists typically behave, for they are unaware of the cautious style of these same authorities when dealing with each other within the halls of ivy. This contrast suggests a remedy along the lines of the multiple use of experts in the Los Angeles case. A team of social scientists that coordinates its testimony offers two correctives: peer review restrains expansiveness, and a group can differentiate tasks and thus narrow the ground covered by each witness.

Another problem that arises from the differential conception of "evidence" involves "managed research." Like "managed news," "managed research" is an inhouse operation. In a real sense, these inhouse studies are frequently not research at all; rather they are contrived demonstrations to support a conclusion or program to which the litigants were firmly committed before the work began. Such investigations are generally hastily commissioned for use in court with points of law, not of social science, paramount. A recent example of "managed research" involved an attempt to show that racial discrimination has played only a minor role in determining the nationwide

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to defendants. Lewis Killian (1956), a distinguished sociologist and an outspoken advocate of racial change, helped the attorney general of Florida to prepare an *amicus curiae* brief filed with the Supreme Court to argue for a gradual implementation of *Brown*. The writer's own involvement with the Norfolk, Virginia, case has been described previously. In the 1970s, a new phenomenon emerged—the social scientist who specializes in providing expert testimony for defendants in school desegregation cases throughout the country and may receive in excess of $20,000 annually for his or her efforts. Given the severely limited financial resources of most plaintiffs and the growing conservatism within social science, it may soon become the case that it is the plaintiffs, not the defendants, who have difficulty in securing expert testimony from social scientists.

residential pattern of suburban whites and central city blacks. Although directly in opposition to the ignored research literature on the subject, this attempt was obviously inspired by recent Supreme Court opinions. The quality of such "research" is suggested by the fact that it typically never appears in leading technical journals, despite the fact that studies that conflict with the established literature are generally highly prized by such journals.

What about conceptual misunderstandings from the other direction—lawyers who must grasp the contrasting definitions of social science? Here legal training in how to organize and digest rapidly a whole new body of knowledge is a great benefit. Indeed, this impressive skill of first-rate lawyers is a constant source of amazement and awe among social science witnesses. The translation and "fit" problem in this direction appears to vary considerably across different social science specialties. Demographic variables and findings, for instance, may be more immediately interpretable to many lawyers than may those of social psychology, but this impression may only reflect the envy and bias of a social psychologist.

Differences in Preferred Scope

Case law is detail oriented; its focus is on the specific. Social science is oriented to the general; its focus is on that which can be generalized across individuals, situations, and societies. Indeed, it is this focus that best distinguishes those disciplines that attempt to understand human behavior and are here being labeled "social science" (Rose 1956). Although overdrawn to make the point, this difference in the preferred scope of the two disciplines is a real one that contributes to the tension between them. This source of tension is often overlooked, because most expert witnesses with whom the law is much more familiar are case oriented in a manner similar to the law. Psychiatrists and clinical psychologists frequently testify in court and have done so for many years. But unlike social scientists, these mental health specialists are more focused on the particulars of a given case than they are on generalities.* It was the school desegregation cases that led to today's growing use of social scientists as expert witnesses. As late as the mid-1950s, Louisell (1955) could find only two other cases in which nonclinical psychologists had served as expert witnesses.

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*Rose (1956, p. 215) points out, in response to such critics as

This difference in preferred scope is made apparent by the recurrent exchange that takes place when the social science witness is cross-examined in court:

- The expert cites a general conclusion relevant to the point at issue.
- The examiner asks for the evidence that supports such a conclusion.
- The expert describes a number of studies.
- The examiner then asks *where* these studies were conducted.
- The expert, a bit surprised by the question, cites the various areas sampled by these studies, none of which include the city involved in the case.
- The examiner now has what he or she wanted.

"So, Dr. Jones, none of the six investigations were actually conducted here in Centerville. There is, then, no reason to expect their findings to hold true for our children and our schools."

When they first encounter this reasoning, social science witnesses are likely to regard it as odd, if not totally irrelevant. Trained to search for the general, social scientists are not likely to question such generalizations across communities when there are no known context-specific aspects to the phenomenon.

This conflict between attention to the specific versus the general reveals itself in many ways. In the eyes of many social scientists, the law concerns itself with a too narrow and localized view to grasp the sweep of such a broad social process as public school desegregation. Did test scores of the desegregated black children rise in the first three months of the program? This is the kind of trivial question that often

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Cahn (1956), that while the "findings of sociology and psychology are, almost always, considerably less reliable than those in physical science.....," their reliability is nevertheless "generally higher than diagnoses made by psychiatrists, which have long been accepted as expert testimony by the courts."

receives considerable attention, not only in the courtroom, but in the media and popular discussion. And some social scientists, particularly those who have carved out a role as professional witnesses for defendants in these cases, pander to this specific focus. But the dominant social science view would prefer to treat the desegregation process as an evolutionary process that must be judged over a sufficient length of time and within the context of how it is achieved (Pettigrew 1971a and 1975, Pettigrew and others 1973).

In the eyes of many lawyers, wary social science witnesses seem too sweeping, too abstract, and too vague.* Refusing to answer straightforward questions with a simple "yes" or "no," these experts appear evasive and unresponsive to the critical and specific legal issues in question. In their turn, judges sometimes attend to social science only as it pertains to the narrowest and most specific issues and simply ignore it when the time comes to consider the wider social perspective. Perhaps the most glaring example of this tendency in recent years is contained in Justice J. Potter Stewart's deciding opinion in *Milliken v. Bradley.*[5] In this key metropolitan education case, Stewart asserts in a footnote that Detroit's predominantly black schools were "caused by unknown and perhaps unknowable factors such as in-migration, birth rates, economic changes, or cumulative acts of private racial fears."[6]

Apart from the problems of attempting to list "unknown and perhaps unknowable factors," this quotation reveals that Justice Stewart maintains his own personal "theory" of urban American race relations virtually uninfluenced by the vast social science literature and frequent testimony on the subject (Pettigrew 1975, Taylor 1975). To be sure, there are a multitude of critical matters about which social science knows pitifully little, but the rigid and massive residential segregation of black Americans within metropolitan America is not one of them. There is overwhelming evidence that the central cause is blatant, structural, intentional, organized racial discrimination, a cause heavily contributed to by government at all levels as well as by the banking and real estate industries (for example, Pettigrew 1975, Roof 1979, Taeuber and Taeuber 1965). And this cause is not even hinted at by Justice Stewart, since "cumulative acts of private racial fears" are more derivative than causal of this structural situation.

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*This perception partly underlies the vituperative attack on social science witnesses in the early desegregation cases by Edmund Cahn (1956).

Ironically, this extreme example points up the situation where social scientists can potentially contribute the most to the law. Rose (1956) stated it well over two decades ago:

> What the social scientist can do in the courtroom is to present certain social facts that serve as conditions affecting the outcome of the case. That is, there are certain cases in which the judge must *assume* certain social facts to be true before he can arrive at any decision. . . . [T]hese are the situations in which social scientists could serve as expert witnesses in court cases and possibly affect the outcome of decisions. (Rose 1956, p. 215.)

Social scientists should, therefore, take up Justice Stewart's challenge to demonstrate just what causal factors underlie today's urban patterns of residential *apartheid*. Likewise, we should respond to Justice Rehnquist's inadvertent call for social science analyses of so-called "incremental segregation effects." Indeed, a team of social scientists have taken up both of these challenges recently in an appendix to a brief filed in the recent Supreme Court review of the Columbus and Dayton school segregation cases. Endorsed by thirty-eight experts from a variety of disciplines, this appendix summarizes the research on both school and housing segregation.

Different Frameworks

Part of the tension between the law and social science extends beyond conceptual and scope differences to the very frameworks within which the relevant facts and theories are placed. This, too, is a vast topic the dimensions of which we can only suggest by providing two illustrations: the social science need to qualify its conclusions in a social class framework that is often seen as irrelevant in court, and the important legal distinction between de facto versus de jure racial segregation that receives no support in social science.

Most social science testimony in school desegregation revolves around issues that are heavily shaped by social stratification factors. From the viewpoint of the expert witness, flat conclusions without social class qualifications are often not possible to make or defend. But these social class qualifications do not coincide easily within the frameworks of American law. Our country was founded in part to escape the burdensome class distinctions of the Old World. Many Americans still find such distinctions embarrassing, even "un-American," and our law accurately reflects this cultural characteristic.

More than once I have had my court testimony on class-conditioned phenomena interrupted by a federal judge. "All very interesting, Dr. Pettigrew," the judge interjects, "but your observations on social class are not material to the case before us. You see, the United States Constitution has no Fourteenth Amendment for the poor." This is not to say that class-conditioned conclusions cannot be made for the court record. But it is to say that such qualifications, vital as they may be regarded by social scientists, are likely to be received impatiently and given short shrift by judges.

In the opposite direction, the concept of de facto segregation, a fundamental backdrop to a host of legal considerations in race relations, is given equally short shrift by most social scientists. Defined as institutionalized racial separation that has evolved "naturally" without the taint of state action, the idea of de facto segregation is suspect on face in a nation that legally sanctioned either slavery or racial segregation for three centuries. And this suspicion is supported by empirical work in American race relations. Not all racial segregation throughout the country can be subjected, of course, to intensive research scrutiny. But that which has received close study invariably reveals some degree of state involvement—from the blatancy of sanctioned red-lining practices to the subtlety of locating public facilities so as to encourage racial separation. Meaningful distinctions between varying levels and directness of state involvement can be made. But the law's belief in pure de facto segregation is, from a social science framework, divorced from the realities of American society.

Contrasting Operating Environments

The discussion to this point can be summarized and extended by contrasting the favored environments in which the two disciplines operate. The courtroom and the research center constitute not only different environments but in effect different epistemological systems. The courtroom relies on adversary procedures, focuses on the immediate and the specific, and is suspicious of generalities beyond those established by legal precedent. The research center relies on procedures of established scientific method, focuses on the long-term and the general, and is suspicious of isolated facts torn from their context and poorly sampled. Both systems are guided by "theory" and "precedent," but they harbor contrasting notions of what is meant by these concepts. Both seek to determine "truth." But each has evolved over recent centuries to meet fundamentally different purposes: the court to balance facts and arguments so as to ultimately decide a specific case in a specific social context; the research center to develop generalizable knowledge.

Two points deserve emphasis concerning these contrasting operating environments. First, these contrasts have obviously been overdrawn in order to sharpen the discussion. The courtroom and the research center *are* different worlds, as illustrated by my discomfort in the Springfield, Norfolk, and Richmond cases and the comparable discomfort of the lawyers with social scientists acting as agents of the Los Angeles superior court. But there is obviously more overlap in style and procedure than indicated. Legal research has many of the characteristics of research reviews in social science, for example (Rose 1956). In fact, I have assigned to social science students the reading of impressive law review articles on school desegregation cases both for their content and as models of clarity and generalization. Likewise, informal, adversary-like procedures are not unknown in social science. Alice Rivlin, the economist who directs the Congressional Budget Office, has even advocated the adoption of a formal adversary system with which social science could settle research disputes of special importance to public policy. This interesting suggestion, however, has not been embraced enthusiastically by social science. Yet many peer review procedures for critical and specific decisions within the area are handled by primitive types of adversary arrangements. For example, many social science journals use two or more competent reviewers ("jurors") to aid the editor ("judge") in deciding on the possible publication of a given manuscript. Usually, the reviewers do not know the identity of the author, and some minimal appeal rights of the author are provided.

The fact remains, however, that law and social science do operate for the most part in contrasting environments. And this fact raises the second obvious,yet crucial, point. Social scientists as expert witnesses are operating within the legal system. They are the ones who are on alien, unfamiliar turf; thus, they are the ones who must make the major accommodations. As the college teaching job market rapidly shrinks, academic social science is understandably showing a renewed interest in applied work. New attention is now being directed to the links between social science and other institutions, including the law. Similarly, an increasing number of leading law schools have been hiring social scientists who specialize in the law. Hopefully, this renewed interest in each other will act to prepare both social scientists and lawyers for more effective collaboration inside and outside of the courtroom.

Summary

There is an inherent tension between social science and the law. This tension has restricted the effective use of social science testimony in public school desegregation cases. Yet this same tension can be mutually beneficial, operating to sharpen the perspectives of both disciplines. It can become increasingly beneficial, however, only if each discipline more explicitly understands the inherent tension between them and what underlies this tension. Four interrelated types of differences between social science and the law have been outlined—differences in concepts, preferred scope, frameworks, and operational environments. Several corrective suggestions have been advanced, such as the utility of teams of social scientists, rather than isolated individuals, to invoke safeguards of peer review and narrowed testimony. And throughout the paper, the point has been emphasized that only long-term collaboration between lawyers and social scientists is likely to prove mutually useful.

Footnotes

1. Barksdale v. Springfield School Comm., 237 F. Supp. 543 (D. Mass. 1965), *vacated*, 348 F.2d 261 (1st Cir. 1965).
2. Brewer v. School Bd. of Educ., 434 F.2d 408 (4th Cir.), *cert. denied*, 399 U.S. 929 (1970).
3. Bradley v. School Bd. of the City of Richmond, 338 F. Supp. 67, 188 (E.D. Va.), *rev'd*, 462 F.2d 1058 (4th Cir. 1972), *aff'd by an equally divided Court sub nom.* School Bd. of the City of Richmond v. State Bd. of Educ., 412 U.S. 92 (1973).
4. *Crawford*, minute order of February 7, 1978.
5. 418 U.S. 717 (1974).
6. 418 U.S. at 756 n.2 (Stewart, J., concurring).

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Courts, Desegregation, and Education: A Look at Boston

Susan Greenblatt
Walter McCann
Harvard University

Introduction

Both the educational merit of school desegregation and the activities of federal courts have been the subjects of heated debate. In the quarter century since *Brown*, educators, social scientists, lawyers, and others have argued its value for majority as well as minority students. Ideology plays at least as important a role as research results in these arguments, for the results of social science research concerning the educational merit of school desegregation are inconclusive. Many studies rely on conventional standardized tests administered before and after one academic year of desegregation. The use of such measures reveals an unrealistic expectation of desegregation efforts. (For a review of much of the literature, see St. John 1975).

One conclusion on which students of desegregation agree is that no single phenomenon adequately represents school desegregation. Public education systems and courts have devised a wide variety of plans, all of which fall under the rubric of desegregation. There seems to be considerable merit in closer analysis of the processes and programs, inputs as well as outputs, that constitute a more complex story of desegregation and its effects on students, faculty, and administrators.

Federal courts have played a crucial role in the process of school desegregation. They have been criticized for timidity as well as for imperiousness. They are deemed inappropriate forums for social change, since they are conservative by nature. Courts, so the argument goes, institute change in response to the legal issues brought before them in a single case. Thus they are required to respond to requests for social change within a narrow framework, without sufficient reference to broader issues and constrained by artificial rules of relevance. They are ultimately unsuited for the complex, continuing tasks of initiating and monitoring large-scale social change. (For an analysis sympathetic to this view, see Horowitz 1977).

At the same time—and more often—the courts have been charged with usurping the power of other public servants, including school officials who have been professionally trained and selected by board members to administer public school systems. These critics maintain that the courts lack the authority and expertise to regulate public school systems. Legal experts responding to this criticism reply that courts reluctantly act to regulate public schools only when educators have failed to perform their duties so as to guarantee all students their constitutional rights. Courts do not relish intervention in the operation of public school systems, according to these respondents, but are forced to do so in fulfillment of their inescapable constitutional obligations.

The intent of this paper is to examine the desegregation process in Boston with an eye to these twin features: the effects of desegregation and the proper role of federal courts in the implementation process. Our general and tentative views at this point are twofold: first, more educational change has taken place in the city than the use of standard measures would now and might eventually reveal, and than probably would have taken place without desegregation; and second, the federal court has ordered reasonable, appropriate, and probably necessary educational steps in light of the recalcitrance of the attitude of the Boston School Committee and its failure to meet the constitutional duty to provide equal educational opportunity.

We do not pretend to reach final conclusions concerning educational change in Boston public schools. The need for extensive research over time remains.[*] Nor are we able to present with certainty a picture of what the Boston public schools would be like today had the court not intervened in 1974, except to assert that we can see little reason to suppose that it would have been radically different than it had been for so many years.[†] Nonetheless, we believe that an understanding of the scope and type of programmatic changes that have ensued since the court order provides a beneficial foundation for understanding and for further inquiry.

In this paper we seek to make a prima facie case for the positive educational role of the federal court in Boston. To do so, we must present a brief history of the case and its elaborate unfolding. Next, we point to some aspects of intervention by the court that have been seen as either unique or at least unusual in their direct and extensive educational content. In doing so, we begin to lay the outlines for a more definitive argument, rather than nail shut the case for the role of the court. Finally, we make some more general comments on the courts and desegregation.

The Boston Case

In 1972 the National Association for the Advancement of Colored People (NAACP) filed suit against the Boston School Committee, the superintendent, and the state commissioner of education on behalf of black parents of children in the Boston school system, contending that all black children had been denied equal protection of the laws through intentional segregation of the schools by race.[1] Additional charges included discrimination in hiring, assignment, and promotion of teachers and administrators; discrimination in curriculum and instructional materials; and discrimination in amounts of money spent in black schools compared to white schools.

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[*] Some aspects of such research have recently been funded by the Ford Foundation through the Institute for Educational Policy Studies at the Graduate School of Education at Harvard University.

[†] At the very least, the burden of proving the contrary ought to rest with the opponents of constitutionally mandated desegregation. We say more on this point later.

The case was tried in federal district court before Judge W. Arthur Garrity in May 1973. Over a year later, on June 21, 1974, Judge Garrity handed down his ruling. He found that the constitutional rights of black students and their parents guaranteed under the Fourteenth Amendment had been violated by the defendants in their operation of the school system.

Based on extensive findings of fact, Garrity found constitutional violations in six areas: (1) facilities utilization and placement of new structures, (2) districting and redistricting, (3) feeder patterns, (4) open enrollment and controlled transfer, (5) faculty and staff assignments, and (6) placement in examination and vocational schools and programs. These violations placed on the defendants an affirmative duty to reverse the consequences of their unconstitutional conduct.[2]

The court ordered the defendants "to begin forthwith the formulation and implementation of plans which shall eliminate every form of racial segregation in the public schools of Boston, including all consequences and vestiges of segregation previously practiced by the defendants.[3]

On June 26, at its first meeting following the desegregation order, the Boston School Committee voted to file motions to stay the desegregation order until mid-October so a citywide plan could be designed or to phase in desegregation over a two-year period, beginning with the middle and high schools. This was the first in a long series of actions by the Boston School Committee in an attempt to forestall and later to obstruct the desegregation process.

Judge Garrity held hearings on these motions and agreed to give the school committee two weeks to file its own two-year desegregation plan. The committee refused to approve any plan that included busing students to achieve desegregation. The judge, therefore, ordered that a desegregation plan that had been formulated by the state commissioner of education be implemented in September 1974. The state plan provided for the reassignment of students in order to comply with the Massachusetts Racial Imbalance Act, which held that any school with an enrollment of more than 50 percent nonwhite students was racially imbalanced. Several large portions of the city were not included in this reassignment plan.

The school committee continued in its emerging pattern of delay and moved toward obstruction. In August, the committee voted to appeal three of the judge's orders, but its own attorneys refused to submit these appeals. Despite attempts by the school committee to obstruct the plan, it was implemented in the fall of 1974. The turbulence that occurred at several of the Boston schools at the beginning of the school year 1974-75 is well known. The overwhelming majority of schools, however, opened and continued to operate peacefully.

In the interim, Judge Garrity had ordered the school committee to file by December 16, 1974, a desegregation plan for the fall of 1975. Although staff members of the school department had developed an extensive desegregation plan, the school committee voted three-to-two to reject it, since it included busing. The attorney for the school committee filed the plan on his own "as an officer of the court." The following day the attorney for the school committee withdrew from the case.

Judge Garrity ordered the three school committee members who had voted against the plan to show cause why they were not in civil contempt of the court. After a hearing, the judge found the three in civil contempt, fined them, and barred them from further participation in desegregation matters. The following month, they purged themselves of the contempt by resubmitting the voluntary desegregation plan. Although the plan was almost surely unconstitutional, the judge accepted this gesture and removed the contempt citations.

In January 1975, Judge Garrity appointed two court experts to serve as his consultants. They were Robert Dentler, a sociologist and dean of Boston University's School of Education, and Marvin Scott, an educator and associate dean of Boston University's School of Education. On the advice of Dean Dentler, the judge appointed a panel of four masters who were charged with the tasks of reviewing all desegregation plans submitted to the court and holding hearings to assist them in recommending a desegregation plan to the court.* The masters appointed by the judge included a retired justice of the Massachusetts Supreme Court, a former United States commissioner of education who was at that time a faculty member of the Harvard Graduate School of Education, a black professor of sociology at the Harvard Graduate School of Education, and a former state attorney general who hailed from South Boston.

Despite the obvious intent of representing various segments of the population by the appointment of an Irishman, a black, and a Jew, as well as the effort to obtain diverse expertise from the legal profession and the disciplines of education and sociology, the appointments resulted in expected challenges by the defendants. The defendants claimed that the appointments of the two faculty members from Harvard were inappropriate since the Center for Law and Education, which represented the plaintiffs, was located at Harvard. (The center, once a part of Harvard, is now an entirely separate organization that rents space from the Harvard Graduate School of Education.) The judge dismissed this challenge (Smith 1978).

The masters held eleven days of hearings and visited public schools. At the end of March 1975, they filed their own desegregation plan with the court. The masters reviewed and rejected the desegregation plans submitted by the Boston School Committee, the plaintiffs, and the school department staff. The committee's plan was rejected because it failed actually to desegregate the school system; the plaintiffs' plan was rejected because it paid insufficient attention to educational implications; and the staff's plan, which was designed without sponsorship by the school committee, was rejected because it projected sweeping changes that would not achieve desegregation. The masters did use parts of each of these submissions in devising their own plan for Boston.

The masters' plan was based on the assumption that parents would not object so vociferously to busing if they found a quality education at the end of the ride. Experience in several Boston schools showed that parents and students voluntarily chose "Boston Tech, located in the section of the city identifiably black, which has a student population that is two-thirds white. The same can be said of the two Latin schools."[4] With this rationale as their guideline, the masters devised a plan that had the dual goals of bringing about educational change and racially balancing the schools. The plan called for the establishment of nine community districts, one citywide magnet district, and pairings between individual schools and universities, businesses, and labor organizations. In order to desegregate, the plan required that ten to fourteen thousand students be bused. The masters proposed that all Boston Public Schools have an enrollment of 40-60 percent white students, 30-50 percent black students, and 5-25 percent other minority students. However, under the masters' plan three of the nine proposed community districts would have remained seriously racially imbalanced, with one district 95 percent white and another 75 percent black and other minorities. One of the masters, Charles Willie, the black member of the panel, has stated that some predominantly black districts are desirable because there is much to be learned from being a minority and that whites could benefit from this experience (Willie 1976).

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*Experts are consultants to the judge and act with relative freedom from procedural constraints. Masters, however, stand in the position of the judge and are constrained by procedures that seek to maintain the adversary character of litigation.

The masters' plan immediately drew criticism from all sides (Ford 1975). The Boston Teachers Union feared that the intervention of universities would subvert the authority of teachers. The NAACP viewed the plan as a capitulation to the threats of violence by antidesegregation forces. The school committee saw the plan as a usurpation of their control and the disenfranchisement of Boston voters. They filed a brief with Judge Garrity that stated, "We observe what appears to be a sharp note of paternalistic superiority expressed by the masters in their rather open disparagement of the efforts of professionals within the school system to provide a quality education for the pupils they serve" (cited in Ford 1975).

This was the point at which the court-appointed experts were expected to have the most to say. Although they had already cooperated with the masters by providing expert testimony, their expected major role was to serve as a transition team from the design of the masters' plan to its implementation.

Judge Garrity, however, had misgivings about the masters' plan. After holding hearings, the judge and his experts agreed with the proposal to aim for quality education, not mere racial mixing of students. Both Judge Garrity and his experts apparently believed that the quality of instruction in Boston Public Schools had been so poor for so long that a redistribution of resources would not guarantee the plaintiff class the equal protection they were entitled to under the law. To provide equal protection, the judge and his experts believed it was necessary to attempt to upgrade the entire system of education in Boston.[5] Thus, Judge Garrity's revised plan established twenty-two magnet schools that were to be paired with universities, businesses, and cultural institutions. The city was subdivided into eight community districts and a ninth citywide magnet district. About twenty-one thousand students were to be bused. The plan also closed thirty school buildings and established districtwide parent advisory councils and a Citywide Coordinating Council consisting of forty Boston leaders to monitor the implementation process.

The school committee immediately appealed the plan and asked the judge for a delay in its implementation. The judge refused the request.

The role of the court-appointed experts was expected to end in June of that year. However, the continuing failure of the school committee to cooperate in the implementation of the plan led the judge to continue reliance on the experts. The first major operational mishap resulting in the extension of the experts' tenure was a breakdown of the computer that was to assign students to schools. Once this breakdown was corrected by adequately ventilating the room where the computer was located, a school committee member fired the computer programmer! Thus began a long series of events perpetrating a noncompliant stance on the part of the school committee in regard to implementation and a concomitant expansion of the role of the experts.

The experts have continued in their roles until the present day; they fulfill a variety of tasks that have enabled the judge to implement and monitor the desegregation plan. Experts Dentler and Scott have made student assignments; intervened in crises in specific schools; and evaluated physical facilities, the effects of teacher discharges on the system, and the distribution of student failures throughout the system. They have also evaluated the effects of policy decisions on the school system, have attended hearings held by the judge, and have provided the judge with technical information that otherwise would not have been available to him. They have written nearly two hundred memoranda to the court in the more than four years they have been involved in the desegregation process. Undoubtedly, Dentler and Scott have had one of the longest and most extensive involvements of any court-appointed experts in any desegregation case in the country.*

This extensive involvement was the preference of neither the judge nor the experts. Judge Garrity made clear at the beginning of the process that the defendant school committee had the legal responsibility of remedying the dual school system:

> Education is a matter entrusted initially to elected local authorities and appointed state authorities. Even after unlawful segregation has been found, responsibility falls initially upon the local school authorities to remedy the effects of this segregation.... Only the default of the School Committee in this case has obliged the Court to employ the help of the appointed experts and masters and to draw an adequate plan.°

In July 1977, two full years after the plan devised by the judge and his experts had been implemented, the school committee had still failed to cooperate with the court. A report issued by the Citywide Coordinating Council, the monitoring group appointed by the judge, noted:

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*Although it would be difficult to prove this without extensive research, case studies of the school desegregation processes in ten cities conducted by Willie and Greenblatt (forthcoming) as well as other published case studies bear out this contention.

> During the ten month tenure of the present Citywide Coordinating Council, the School Committee has twice sought to evade the orders of the Court respecting the appointment of principals and headmasters on a desegregated basis. It has failed to desegregate elementary schools singled out by the Court for special measures. It has sought to evade an agreement with the Court on appointment of personnel to the office of Safety and Security. It has failed to control desegregative assignment of students. It has failed to implement the court-ordered plan for vocational-occupational education. It has failed to give full recognition to court-ordered bodies for parent and community participation on a desegregated basis. These failures in the active presence of court supervision eliminate from serious consideration any suggestion of the "withdrawal" of the Court. The School Committee of the City of Boston has yet to demonstrate its intent and ability to uphold the Constitution.

Thus, the experts have continued in their rôle until the present day. They envision a withdrawal by the court when it becomes clear that the school system will continue to enforce the remedy on its own. Despite the good intentions of the past and present superintendents in cooperating with the court, their ability to mobilize the system to support the court order has been hampered by a still uncooperative school committee. Nearly five years after the initial ruling was handed down, members of the Boston School Committee continue to use the issue of court-ordered desegregation for their own political gain, albeit in less blatant ways than previously. The process has become a vicious cycle—lack of cooperation from the school committee results in continued court intervention, which in turn results in the school committee members campaigning on a platform with the goal of removing the federal court from the operation of the schools.

Educational Change in Boston

Insofar as we can tell, the Boston court orders appear to have emphasized educational change more than any other city's desegregation plan. Perhaps few of the changes ordered by the court are entirely new; the overall educational emphasis, however, seems unprecedented. This emphasis is due in no small measure to the continuing role of the experts who are professionally trained in education and social science.

Judge Garrity has said that he is tempted to call the magnet schools the "magic" of the desegregation plan. The twenty-two magnet schools designated by the court are at all three levels—elementary school, middle school, and high school. Many of the magnet schools have educational themes such as multicultural education, science, language arts, college preparatory, or humanities.

Magnet schools must have a student body with a racial mix reflecting the citywide enrollment. Twenty-five percent of the seats in the magnet schools are reserved for students from the community district in which the magnet school is located. Students apply for enrollment in a magnet school in the spring for entrance the following fall. In 1975 and 1976, many of the magnet schools had more applicants than seats. Only a few magnet schools have been underenrolled as a result of the policy that keeps a ceiling on the enrollment of specific racial groups (Dentler 1977). Approximately 29 percent of all Boston public school students attended magnet schools in 1978.[7]

Pairings between schools and universities, businesses, and cultural institutions are another unusual feature of the Boston desegregation plan. Prior to announcing his plan for the Boston schools, Judge Garrity invited the many colleges and universities in the Boston area to team up with a specific school or community district in order to improve educational offerings. In the summer of 1975, with the assistance of the court experts, representatives of the colleges and the schools jointly developed proposals for new educational programs. State funding was available to underwrite the pairings in order to provide additional staff at the schools, special equipment, and a position for a coordinator of each pairing.

The initial commitment on the part of colleges and universities was for three years. With the fourth academic year almost over, most pairings have continued. In fact, the extent of university involvement has increased. In the 1977-78 academic year, twenty-four colleges and universities cooperated in forty-two collaborative ventures with the schools. In the same year, nearly two-thirds of the students in the system received some direct benefit from the pairings (Hunt and others 1978).

Services provided under the pairings include diagnostic testing, tutoring, additional classroom aides, materials, field trips, workshops for teachers, curriculum development, and consultation. The fear that colleges would try to run the schools or experiment with the students evidently proved less of a burden than feared. Although there have been tensions, both parties have continued in the relationship in virtually every case.

Similarly, businesses and cultural institutions have developed programs in many of the schools. For example, the State Street Bank along with Harvard University have developed a career education program for seniors at Roxbury High School. The John Hancock Insurance Company has provided computer and printing services as well as a career education program at English High School. The Museum of Fine Arts has instituted a special crafts program for sixth graders (Case 1977).

The court has also identified schools where bilingual education programs must be established and has required that every school have facilities to deal with the special needs of students. It has standardized the grade structure of the schools (1-5, 6-8, 9-12), has closed unsafe facilities and ordered repairs in salvageable buildings, and has established plans for an Occupational Resource Center (Dentler 1977).

Establishment by court order of various levels of parent councils (school, community district, and citywide) has added another dimension to the decision-making process in the school system. Although the councils are essentially advisory, they have authority to screen candidates for administrative positions and to sign proposals submitted for funding. Participation on these councils has not been as high as the court anticipated in all schools; nonetheless, at some schools parents have apparently used these councils to bring about educational changes or to prevent the closing of the school (Greenblatt and Willie forthcoming).

Two schools that illustrate the extensive involvement of the court with educational matters are the Mario Umana Harbor School of Science and Technology in East Boston and South Boston High School. The two schools provide an interesting comparison. One was created at the behest of the court and would not have existed in its current form without legal intervention. The other, the well-publicized "Southie," was placed in federal receivership due to the unconstitutional conditions that existed at the school.

The Umana School evolved from a recommendation by the masters that East Boston be treated separately, since it is physically separate from the rest of the city.[8] East Boston is geographically isolated from and connected with the city by a tunnel that handles a great deal of traffic; it is the major artery for vehicles headed to the airport from Boston and points south and west. The masters deemed it unwise to order the busing of several thousand white youngsters through the tunnel out of East Boston and a comparable number of minority youngsters into East Boston. They applied their rationale that a good educational program would attract minorities to travel the distance to reach East Boston. The school was paired with Massachusetts Institute of Technology (MIT), Wentworth Institute (a technical postsecondary school), and Massport (the agency that operates Boston's airport). The logical educational theme for the school that evolved from the partnership was scientific and technical.

The planning that guided the establishment of the school was as unusual as the circumstances of its birth. Umana was planned under conditions that were in some ways ideal. The school was brand new; there was no need to change organizational patterns or goals. The school "belonged" to no racial or ethnic group. The expertise provided by the paired institutions was of a caliber that probably could not be surpassed anywhere in the country. MIT appointed two people to begin the planning process. Along with others from MIT, they met with an administrator from East Boston High School, who was later to become assistant headmaster at

Umana. MIT soon realized the enormity of the task ahead and created a full-time position as coordinator of the pairing. Stanley Russell, a former school superintendent with a doctor's degree in education from Harvard, was appointed to the position. To develop the curriculum, he immediately formed a series of committees composed of interested professionals from MIT, Wentworth, industry, and state and federal agencies, and teachers from other school systems. This group eventually designed a curriculum consisting of aviation, computer science, electronics, environmental protection, and medical technology.

The student body was to include a wide range of achievement levels; no entrance exams were to be required. The plan included strong remedial and guidance components for the school.

After the initial planning had taken place, the court ordered that the Umana School be established in a new, empty middle-school building in East Boston. This decision created physical problems. The desks and chairs were too small for most of the seventh-to-twelfth graders who were to enroll, there was no equipment for the special courses, and there were no physics or chemistry labs. During the first year of operation (1976-77), the school had none of the equipment needed for its highly specialized curriculum.

The school has gone through extensive renovations and has received much specialized equipment. It now has its own computer with sixteen terminals, a medical technology lab, physics and chemistry labs, and an aviation flight center with a half-dozen flight-simulator machines.

Students are recruited through distribution of a videotape describing the school to neighborhood groups throughout the city. Brochures on its program are also distributed citywide. The current enrollment is approximately one thousand students who voluntarily attend the school. The student body is 46 percent black, 41 percent white, 9 percent Hispanic, and 4 percent Asian. For the past academic year, the Umana School was the most popular magnet school in the city--nearly eighteen hundred students selected it as their first choice.[9]

Students enter the school in the seventh grade and normally continue there until graduation. All the students at

Umana experience each of the five curriculum areas on a rotating basis in the ninth grade. By the end of that year they decide in which area they would like to specialize for grades ten, eleven, and twelve.

The contribution of the organizations paired with the Umana School is notable. Russell spends a good part of each day at the school, where he works alongside the headmaster and assistant headmaster. He has access to the numerous scientists on the faculty at MIT, who provide advice on curriculum content. Both MIT and Wentworth Institute have donated physical equipment as well as the services of some of their students as tutors, lab assistants, and administrative aides. Massport has enabled the students to visit the nearby airport to learn about its internal operations and has provided contacts with individuals employed in various aviation fields.

The Umana School has not yet graduated its first senior class, so no data as to its success in placing students in jobs are available. Nor do we have hard data concerning changes in the educational achievements of students enrolled at the school. But clearly its curriculum is substantially different from the traditional curriculum of Boston Public Schools. Furthermore, the high rate of applications for a school that is not centrally located strongly suggests that the curriculum addresses the needs of a substantial portion of Boston's students, needs that must have been unmet previously because its curriculum is unique.

South Boston High School and its surroundings have been the scene of most of the disruptions associated with the desegregation of Boston Public Schools. At the outset, whites in South Boston boycotted the school and continually held rallies and protests against busing. The school remained open amid the protests as well as attempts by both blacks and whites at various times to have the building closed.

Prior to the desegregation order, South Boston High served as the central focus of the neighborhood. Despite the community's pride in the school, the physical facility and the quality of instruction both were poor. The building had obsolete equipment and inoperable fixtures and was not kept clean. The student body of approximately one thousand consistently scored below average on standardized tests, and less than 10 percent of the students pursued higher education after high school.

In November 1975, lawyers for the plaintiffs asked Judge Garrity to close down South Boston High School. They filed affidavits from black students who stated that teachers, white students, and police subjected them to unfair treatment and harassment. According to these students, examples of racial slurs and chants by white students were numerous.

That same month, Judge Garrity held hearings concerning the charges. The man who had been headmaster of the school since 1965 corroborated the black students' charges of racism and interracial fights. Nonetheless, he contended that those students attending classes were learning.[10]

The following day Judge Garrity paid an unannounced visit to South Boston High School. After six days of testimony by students, police, teachers, and administrators, the judge returned for another visit.

On December 9, Judge Garrity announced his decision to put South Boston High School under receivership of the federal court. The text of his order stated that the services offered to South Boston High School students were "primarily custodial, and only incidentally educational."[11] In most classrooms there was no sign of dialogue between students and teachers or of other educational processes. Students did not have books or other educational materials. Furthermore, the judge found that the school had remained an identifiably white school with no black administrators in the main building. Athletic teams and assemblies remained segregated.

The judge observed that the school committee had continued its attempt to obstruct the desegregation order by doing "no more than what the court has ordered explicitly. The court is therefore compelled to rely on the good faith and professionalism of various officials and employees of the school system to carry out the spirit as well as the letters of its orders. . . ."[12]

The receivership order removed the operation of the school from control of the school committee. Judge Garrity made Superintendent Fahey the immediate receiver and transferred the headmaster and his staff out of the school.

The judge, his experts, and the superintendent immediately began plans to revitalize the school. They renovated the building, brought in new equipment, and started new educational programs.

The court suggested modified clustering of students, an increase in qualified guidance counselors, and an expansion in extracurricular activities. In the spring, the judge and the superintendent selected a new headmaster, Jerome Winegar of St. Paul, Minnesota. Judge Garrity ordered the school committee to appoint Winegar headmaster of South Boston High School.

Winegar recruited school staff from St. Paul in an effort to restructure and improve education at South Boston High School. Geraldine Kozberg was appointed director of program and staff development, a position created by the court and heretofore unheard of in the school system. Since 1976, the curriculum has been substantially changed and special programs have been added.

The philosophy of Winegar and Kozberg embodies the notion of choice for the students. Prior to the appointment of these two administrators at the school, most of the entering ninth-grade students enrolled in the business course before they had a chance to explore other options. Today, ninth graders take a variety of courses that enable them to decide on possible academic and occupational pursuits. Ninth graders also have the advantage of a newly developed reading program that employs an individualized approach to reading and writing. A reading specialist has been hired to develop this program and to assist the teachers who instruct in the program.

The math curriculum has been reorganized once and is about to undergo further revisions. Again, the aim is to provide instruction commensurate with the students' abilities. Eight different levels of math courses are currently offered, ranging from basic math through analytic geometry. The teachers have found that the eight sections are not sufficient for the wide range of abilities; thus, further refinement will take place.

South Boston High School offers a variety of new special programs. Included among these are music, a theatre workshop, operating a stall at the downtown Quincy

Market, tutoring elementary school children, a business lab, and an oceanography and marine studies program that enables students to do field work nearby. These special programs serve a wide variety of interests and reflect a vast change for a school that did not even have a music course prior to the court-appointed administration.

Alternatives to the traditional self-contained classroom are also available. The school-within-a-school involves a group of ninth-to-twelfth graders and five teachers who coordinate the curriculum for various subjects. The program is day-long and stresses an open environment where students work at their own pace. The Transportation Learning Center is an automotive repair shop that teaches students the technical and management skills necessary to operate an automobile repair business.

The new South Boston High School administrative team has also established a range of student services to deal with problems and to help students find appropriate programs. For example, the inschool suspension program is an all-day-long class program where students who otherwise would have been suspended for several days spend their time constructively in a classroom. Students who have problems functioning in a particular class may request that they spend that class period in the inschool suspension program where they will receive tutoring in the subject they are missing. Community liaison workers contact parents of any students who have been suspended or have gotten into trouble, in an attempt to jointly work out the problems with the families. The back-in-class program was set up recently to encourage students who persistently cut class to return. The program pairs individual students with teachers who serve in a big brother/big sister role.

South Boston High School was paired with the University of Massachusetts/Boston's Harbor Campus. The school and the university each had different ideas concerning the programs that should emerge from the pairing. As a result, no programs have emerged directly from the collaboration. However, the court enabled the school to work with other institutions of higher education. Several teachers on the faculty are currently completing master's degrees through a program offered by Salem State College at the high school. The downtown campus of the University of Massachusetts/Boston has developed a program leading to a bachelor's degree for parents and paraprofessionals at the school. Also the business pairing with the Federal Reserve Bank has been more successful than the original college pairing. Several South Boston High School students hold jobs at the bank, and the liaison person helps the school with its computer program.

Without a doubt, problems still remain at the school. Perhaps the most obvious is student attendance. The attendance rate has climbed steadily over the past three years; it began at about 50 percent and now averages somewhere between two-thirds and three-fourths of the assigned eight hundred students.*

However, a trip to the school reveals that much has changed since Judge Garrity's visit in December 1975. The school is no longer identifiably white; blacks and Hispanics are among the administrative and teaching staff. Although students of specific racial groups often cling together, there are also examples of interracial interactions between students as well as between students and staff. This is no mean feat in a school that is located in a neighborhood still replete with graffiti condemning the black race.

Initial, though limited, observations in classrooms reveal that most of the students are involved in educational endeavors, whether they be reading, writing, or operating business machines.

As with the Umana School, we have no "hard data" indicating an increased achievement level among the students enrolled. Indeed, the school administrators would be the first to admit that much work is needed to improve student achievement. Nonetheless, there are reasons for a guarded optimism. The attendance rate continues to increase, students find special programs to fit their specific needs, and administrators attempt to respond to the problems by revising the programs and offering alternatives.

In March 1977, the superintendent, in her role as receiver, submitted a report to the court detailing the changes that had been implemented at the school. She noted the need for continued close monitoring of staffing decisions. The receiver's report played an important part in a consent decree submitted by the school defendants as part of their motion to terminate the South Boston High School receivership. The parties agreed that the proposals in the receiver's report were "reasonably calculated to accomplish desegregation at South Boston High School and are among the steps which may be taken to effect desegregation."[13] The consent decree closely paralleled the format of the receiver's report and was adopted substantially without change by the court in its order terminating the temporary receivership on September 20, 1978.

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*School personnel give different views of the actual attendance.

In terminating the receivership, the court also relied on a report of the experts, which stated that the school had "been improved tenfold since 1976." Judge Garrity also visited the school on May 18, 1978, and concluded that the "conditions warranting the extraordinary receivership remedy no longer existed."

Perhaps more importantly, the court cited as evidence for its decision the increasing good faith of the school committee and school department. A new school committee had ratified an affirmative action program shortly after it took office, and the Department of Implementation* had demonstrated "its readiness and capacity to facilitate and monitor implementation of the Court's desegregation plan." The court therefore rejected the plaintiffs' and state board of education's objection to abrupt termination and refused to institute a trial period during which the court and parties might evaluate the actions of the school defendants in carrying out the provisions of the proposed consent decree.

Analysis of the Judicial Role

The foregoing description of the Boston school desegregation process, albeit incomplete, raises several important

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*The Department of Implementation was established in the school bureaucracy to administer the process of desegregation. Although occasionally lambasted by the school committee, the department, some observers think, provided a new opportunity for patronage appointments by the committee.

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questions from both a legal and an educational standpoint. First, was the judge justified in his extensive educational intervention into the Boston school system, especially at South Boston High School? Were the structure and function of the masters' panel legally appropriate? Has the continuing role of the experts been justified legally and educationally? Has education improved in the Boston Public Schools as a result of desegregation?

Following the announcement of the Phase II desegregation plan, Judge Garrity set out the legal justifications for using a multiplicity of measures to desegregate the schools.[14] The magnet program was supported by reference to Federal Education Amendments of 1974 and by the use of magnet schools in other cities. Even the pairings of schools with colleges and universities had a legal precedent in a Texas case,[15] where colleges were used to develop the bilingual-bicultural programs that were part of the desegregation plan. The Supreme Court affirmed the legality of the educational changes ordered for Detroit as part of its desegregation plan.[16] Furthermore, Judge Garrity's rulings have been appealed on various grounds throughout the desegregation process, and in every instance they have been upheld.

Perhaps more controversial than the educational programs originally implemented by Judge Garrity has been the length of time he has remained so actively involved in the case. In many recent school desegregation cases, once the remedy is ordered, the judge plays a minor role in the case. In some instances, judges limit their roles to interactions with monitoring boards they have appointed to report to them on the implementation process. Such has not been the case with Judge Garrity. Although he has appointed monitoring boards, he has also kept abreast of virtually all the developments in the school system that might affect implementation of the desegregation plan. For example, he is involved in budgetary matters, staffing patterns, and school closings. Critics would contend that such an extensive role is beyond the bounds of the judicial behavior required to enforce a desegregation plan. Yet once the decision has been made that desegregation requires educational change, it becomes easier to understand why the judge became involved in such issues. How, for example, can educational opportunity be improved

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without reference to staff? Since perhaps 70 percent of the expenditures of a typical system support the staff, budget issues must come to the forefront of judicial concern. Of course, if school authorities comply with general directives of a court, the need for careful scrutiny and extensive judicial control is reduced. Grudging compliance, often open defiance, by the Boston School Committee brought forth at least part of the extensive response by the court.

The court's actions toward the school committee members are also worthy of analysis. After his initial finding of intentional segregation by the committee, he allowed that body two weeks to design a desegregation plan. Was the amount of time he allowed unreasonable? At first, it would certainly seem so—two weeks to desegregate a system with approximately ninety thousand students!* But the history of the desegregation issue in Boston reveals that the committee should have been working on such a plan for years. The issue was raised in the early 1960s by the NAACP. Although the case did not reach the court until 1972, the school committee still had ample time to devise a desegregation plan and could not have been too surprised when it lost the original suit. Judge Garrity's attempt to be fair with committee members is further exemplified in his treatment of the three individuals who refused to approve the department's desegregation plan. He allowed them to purge themselves of a civil contempt charge by submitting a plan without busing, one that was clearly unacceptable and probably violated United States Supreme Court standards. Observers of the court still differ over whether the judge in this and other instances might actually have been too lenient.

Judge Garrity's appointment of a panel of masters was another unusual aspect of the Boston case. The concept of using a master in and of itself is not controversial. Rules governing federal civil procedure provide that masters shall be appointed under "some exceptional circumstance."[17] Although during the twentieth century procedural reform has imposed increasingly stringent restraints on references of nonjury cases to masters,[18] there seems little difficulty in meeting the "special circumstance" requirement in cases of formulation of institutional remedies for Fourteenth Amendment violations. Moreover, the judge finally rejected the plan devised by the masters and developed his own with the aid of the two experts.

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*Although the system claimed more than ninety thousand students for the purpose of state aid, enrollment counts related to the desegregation suit raised substantial doubts that this many students were ever enrolled in Boston schools.

Other desegregation cases have employed a single master, whereas in Boston there were four. This unusual arrangement corresponds to Garrity's sensitivity to the ethnic tensions that a desegregation suit embodies, especially in a tightly knit city like Boston where ethnic ties are especially strong and neighborhoods distinct and separate. Had the judge selected a single white master, the plaintiffs undoubtedly would have charged that that individual could not understand the rights of the plaintiff class to be remedied. Had he appointed a black master, the defendants would have raised objections. Legally the appointments of masters and experts need not meet a standard of impartiality, since these individuals must possess expertise in a specific field. Nevertheless, Judge Garrity's appointment of masters in sympathy with a variety of viewpoints held by the community were well within the legal guidelines. More importantly, he exhibited sensitivity to issues of political acceptability of his orders.

The role of the court-appointed experts in the Boston desegregation case again is unusual, if not unique, among desegregation cases. Experts Scott and Dentler have been intimately involved in educational planning and policy-making for the Boston Public Schools for more than four years. They have provided the judge with the expertise and data necessary for decisions and have actively supervised many of the routine procedures involved in implementation of the desegregation plan. In contrast, most school desegregation cases have utilized experts as witnesses during the trial or during the initial design of the remedy stage. We are unaware of situations where court-appointed experts have maintained such a lengthy, extensive, and intimate involvement in the details of an operating school system.

Pettigrew's paper (see chapter 2) suggests that a long-term collaboration between lawyers and social scientists is beneficial. The Boston experience shows that an extended relationship between the judge and the experts is also beneficial. A continuing involvement of experts enables a court to monitor the implementation process and to gather data collected by experts in the field. Reliance on school department information, which in Boston was incomplete and reluctantly supplied, was reduced. Experts may also suggest solutions to problems in the implementation process, whereas it is not reasonable to expect the judge to be knowledgeable in this area. Furthermore, a continuing role is more realistic than a short-term effort at designing a plan, since no "ideal" desegregation plans have yet been devised. Maintaining the position of expert for as long as it is needed allows for continuing educational revisions in the desegregation effort.

The individual filling the role of court-appointed expert experiences both benefits and liabilities. A court-appointed expert has the chance to apply academic knowledge to a practical setting, a task that may result in improved education for school children. To many, this combination represents the height of professional experience. On the other hand, experts may incur the wrath of their professional colleagues who believe the administrators of the school system should be allowed to maintain control.

Advocating a continuing role for court-appointed experts does not mean that all desegregation cases should require involvement as extensive as four years or longer. To the contrary, an expert's role probably should be terminated when it is clear that the school administrators are willing to make decisions on their own that will result in continuing programs providing equal educational opportunity. Clearly, the Boston School Committee presents an extreme case of noncompliance with the court's order for desegregation. Nonetheless, research does indicate that in virtually all instances in which school boards have faced a court order to desegregate, they have been reluctant to cooperate with the court's order (Kalodner and Fishman 1978; Willie and Greenblatt forthcoming). The length and extent of experts' involvement must vary with the degree of cooperation exhibited by the school board.

Furthermore, school boards are composed of politicians, not professional educators. The traditional role of school boards—legitimating the decisions of superintendents (Kerr 1969)—has been modified via the school desegregation process. Superintendents willing to desegregate their school systems are usually held back from this effort by the political orientations of the school board members (Kalodner and Fishman 1978). Such was certainly the case in Boston. The court-appointed experts, on the other hand, are not hampered by the school board members and thus may work more effectively toward desegregation.

That Judge Garrity was not merely trying to usurp power from professional educators is also made clear by his appointment of Superintendent Fahey as receiver of South Boston High School. Knowing that Superintendent Fahey was eager to cooperate with the desegregation effort, Judge Garrity was willing to put her directly in charge of the high school, while removing the constraints that the committee had placed on her.

The appropriateness of the receivership itself has been the subject of much controversy. Placing a public high school in federal receivership was a novel action. Yet Judge Garrity's approach reflects a trend toward increasing use of court-appointed officers to fashion remedies and implement decrees in disputes involving constitutional rights where political and social dissent have been involved.[19] *Brown v. Board of Education of Topeka*[20] emphasized the availability and expansion of general equity powers to eliminate dual school systems. We are hard pressed to see why this power should exclude the utilization of receiverships to obtain compliance with desegregation orders. The receivership order was upheld by the court of appeals, which stated that such a measure was reasonable in light of the "grave threat to the desegregation plan and to the safety and rights of the black students at South Boston High School."[21]

What effects have these various judicial procedures and mechanisms had on education in the Boston public school system? No definitive answer is available for who knows what might have occurred without court intervention. This is not, after all, a laboratory experiment replete with all the necessary scientific controls. There are, however, indications that some improvement has taken place.

A recent survey of Boston community leaders (Willie and others forthcoming) revealed that nearly half (48 percent) felt that education had improved since the schools had been desegregated, compared to one-quarter (24 percent) who felt that education had deteriorated. Those who felt that education had improved cited magnet schools and pairings most frequently as the reasons for the improvement. A survey of Boston public school teachers (Citywide Coordinating Council 1977) found teachers about equally split on the question of whether education had improved in quality since desegregation: forty percent thought there had been improvement, whereas thirty-nine percent believed that education had been harmed by desegregation. Fifty-one percent of the teachers believed that desegregation would cause short-term disruptions but would eventually result in improved education. Fifty-five percent of the teachers believed that the school committee would not have solved educational problems without court intervention.

Many programmatic and curricular changes have resulted from court orders, including those documented in this paper. The ultimate effect of these changes on the quality of education and the job prospects for graduates of Boston Public Schools is not yet known. However, it is clear that these changes represent a flexibility in the offerings and organization of the Boston Public Schools that has long been missing. In the late 1960s, critics such as Peter Schrag and Jonathan Kozol wrote scathing portrayals of the Boston school system. Just a decade later the school system is replete with innovations initiated by the court, as well as others that might well have been stimulated by its intervention.

To acknowledge that change per se is beneficial in a system long noted for its educational stagnation is not to ignore that problems still exist and that new problems have been created by these innovations. For example, magnet schools attempt to draw students voluntarily by offering specialized programs. Thus they must compete with district schools in order to get students to travel longer distances if they wish to attend. But do magnet schools really offer a superior education or does the "magic" of magnet schools depend on the success of a good advertising campaign? We do not know the answer to this question.

Pairings with colleges and universities provide the expertise of faculty members and fresh ideas for the school system. But where does the coordinator of the pairing fit into the administrative structure of the school? How do the principal and teachers relate to the coordinator, and what authority does he or she have? More seriously, do university faculty members really "know better"?

Innovations such as pairings are funded with state money. What will happen if the state withdraws support? Which of these innovative programs are beneficial, and why have they not been institutionalized into the school system? Certainly the failure to evaluate innovations and retain only the beneficial programs does not bode well for what may happen to these programs once a court withdraws.

Conclusion

To suggest that educational changes ordered by a court are beneficial is not, however, to prove the truth of the assertion. Here we run afoul of conceptual and related difficulties. What, after all, is beneficial in educational terms, and who is to decide, based on what criteria? This is a familiar quagmire—one that often drives researchers to the use of standardized tests, or to other fields of inquiry. Further research may help document educational and social changes, though their causes may remain debatable.

Even with further careful research, however, our initial hunch is that standard pre- and post-analysis of test data will probably prove inconclusive. What reason is there to believe that a complex phenomenon like performance on standardized tests will yield quickly to a complex of orders that touch on many aspects of life in a school and that do *not* focus particularly on the improvement of test scores?

To some extent, we believe that the verdict on the educational impact of the courts might well be considered with a legal notion of truth-seeking in mind, rather than a scientific paradigm. In essence, we suggest that the burden of proving effect—good, bad, or indifferent—ought to be borne by the opponents of judicial intervention rather than its proponents. The courts become involved, after all, not because they seek to run school systems but because constitutionally protected educational rights of students have been violated. The court, thus, is in the position of seeking a remedy for the deprivation of educational opportunities. If it orders practices that are acceptable to professional educators, we think there is good reason to assume that these efforts will have positive educational effects. School boards, administrators, and teachers are seldom held to a stricter standard. This approach would, of course, shift the focus from measure of educational output back to the more or less traditional measures of educational input, that is, availability of programs, quality of teachers, and diversity of offerings. But since most educational judgments are made in this fashion, by professionals as well as parents, we are puzzled as to why a court, which operates under constitutional mandate, ought to be judged by more stringent standards than the profession and the elected political leaders who usually set policy for the schools.

Thus, the burden of argumentation, in our view, ought to lie on those who assert that courts have no business making educational judgments, either directly or through masters and experts. Since courts are often faced with making complex judgments about matters of a highly technical nature—from railroad reorganization to regional riparian rights—there seems to be no inherent reason why, with proper assistance, education ought to be beyond their ken.

More specifically, the Boston school system has for years been troubled and viewed by professional educators and parents as closed, inflexible, and often outmoded. Since court intervention, many aspects of the system have changed to create a more flexible, open, and current system. In order to respond to requests for information from the judge, a new budgeting and information system has been developed. For the first time in years, the system has a reasonably accurate notion of how many students attend which schools. With the appointment of ninety new principals, for the first time in many years there is an administrator responsible for and located at every school in the system (previously, some principals were responsible for more than one school). The teaching staff now includes substantial, though still legally insufficient, numbers of minority professionals. The system and the school now respond to a variety of groups other than the school committee, for the judge has created outside "peers" through the pairings and the development of parent councils and citywide monitoring groups. New schools have been developed, and old ones closed, and new programs are found in many schools. In spite of the publicity centered around "Southie," most of the schools operate peacefully and contain student bodies with a racial mix that satisfies the mandate of the court. The school committee, for the first time in its modern history, has recently appointed an outsider as superintendent; Robert Wood is the former undersecretary of the U.S. Department of Housing and Urban Development and president of the University of Massachusetts. The long-term effect of his stewardship remains to be seen.

Thus, in a variety of ways, the Boston system, either under direct court order or because of pressures aided and abetted by judicial presence, has taken steps that organizational and educational theorists as well as many parents would prescribe as necessary to cure its ailments. We believe that those who suggest that the court has acted inappropriately bear a heavy burden to show that, on balance, the system and its clients will be harmed by this intervention.

The Boston desegregation case offers an example of extreme noncompliance on the part of a school board and unusual perseverance on the part of a court. Hopefully, it will not be necessary for courts in other cities to maintain the continuing intervention that has been necessary in Boston. Nonetheless, the Boston experience offers many lessons for those involved in the desegregation process in other cities. Although the specific circumstances of the case and demographic characteristics of the city have helped to determine the posture of the court and the nature of the remedy, the Boston model clearly indicates that a strong, persevering judge may bring about educational change in the most rigid of school systems. Former Seattle Superintendent Forbes Bottomly (1978) has contended, "The Judge cannot continually supervise the schools no matter how derelict the school officials might seem." We believe the Boston desegregation case makes a convincing argument to the contrary.

Footnotes

1. Morgan v. Hennigan, 379 F. Supp. 410 (D. Mass. 1974).
2. *Id.* at 482.
3. *Id.* at 484.
4. "Draft Report of the Masters," Morgan v. Kerrigan, Civil No. 72-911 (D. Mass. March 21, 1975).
5. Robert Dentler, interview with, March 27, 1979.
6. Morgan v. Kerrigan, 401 F. Supp. 230 (D. Mass. 1975).
7. "Umana Magnet Most Magnetic," *Boston Globe*, July 7, 1978.
8. Robert Dentler, interview with, March 27, 1979.
9. "Umana Magnet Most Magnetic," *Boston Globe*, July 7, 1978.
10. Morgan v. Kerrigan, November 1975.
11. Morgan v. Kerrigan, 409 F. Supp. 1141 (D. Mass. 1975).
12. Morgan v. Kerrigan, December 9, 1975.
13. Motion for Termination of SBHS Receivership, p. 2.
14. Morgan v. Kerrigan, 401 F. Supp. 234-35 (D. Mass. 1975).
15. Arvizu v. Waco Indep. School Dist., 373 F. Supp. 1264, 1280 (W.D. Tex. 1973).
16. Milliken v. Bradley, 433 U.S. 267 (1977).
17. Federal Rules Civil Procedure, Rule 53 B.
18. "Masters and Magistrates in Federal Court," *Harvard Law Review*, 88 (1975), pp. 779-803.
19. Jaroslawa Zelinsky Johnson, "Comment, Equitable Remedies: An Analysis of Judicial Utilization of Neoreceivership to Implement Large-Scale Institutional Change," *Wisconsin Law Review*, (1976), p. 1159.
20. Brown v. Board of Educ. of Topeka, 349 U.S. 294 (1955).
21. Morgan v. McDonough, 540 F.2d 527 (1st Cir. 1976).

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The Impact of Court-Ordered Desegregation: A Defendant's View

David A. Bennett
Milwaukee Public Schools

Introduction

Agreeing to focus on school desegregation from the defendant's point of view automatically cloaks the writer in the raiment of the accused and guilty. Without protesting too much this relegation and being too "defensive a defendant," I accept the appellation "defendant" as an institutional reference more than a personal one.

When social scientists review the impact of desegregation litigation upon a school system, they have the advantage of apparent objectivity and presumed research expertise. However, the social science researcher is rarely party to or observer of the important events that frequently occur behind the closed doors of a court chamber or school administrative office. School administrators, on the other hand, while privy to many of the important events, are prejudiced observers at best and may be incapable of presenting that which they think they know in any meaningful form. Because practitioners are so immersed in detail, general principles risk going unrecognized.

As deputy superintendent of the Milwaukee Public Schools, I have been responsible for both the design and implementation of the court-ordered desegregation plans. For this reason, my credentials as a principal party in the matter seem prima facie secure; however, I clearly recognize that I don't enjoy the same source credibility when it comes to objectivity. With this unavoidable constraint in mind, I have attempted to direct my commentary to those aspects of the defendant's view of impact with which I am most familiar, but also with an eye to extracting generalizations —biased though they may be.

In the following section of the paper I recapitulate the history of the litigation. In the next section I review the impact of litigation and the consequent court order on various sectors of the community. Finally, I review the impact of school desegregation on top-level school administrators and school principals. In doing so I have not given significant attention to the impact on teachers or other staff members, or for that matter on students. This choice of focus is not only a result of direction given me in the preparation of this paper but also the natural result of my commenting on those events and personalities I came most frequently to view.

It is difficult to underestimate the impact of court-ordered school desegregation on a school system and community. Like a great iceberg, what is visible and apparent to everyone belies the larger existence lurking below the surface. In looking at the impact of school desegregation from a defendant's point of view, I have attempted to take advantage of the insider's perspective and to reveal some of the less obvious and, in some cases, unintended consequences of the process.

A History

On January 19, 1976, the United States District Court for the Eastern District of Wisconsin handed down a decision that found the entire Milwaukee school system was unconstitutionally segregated.[1] At the same time, the court handed down a partial judgment that directed the Milwaukee Public Schools to begin immediately to formulate plans to eliminate every form of segregation in the public schools of Milwaukee, including all consequences and vestiges of segregation previously practiced by the defendants. The court appointed a special master, John Gronouski (former postmaster general of the United States), and directed him to work with the school system to formulate a plan to meet compliance.

Just prior to the court order, the administration and the board developed various statements of policy that demonstrated their interest in using voluntary approaches and educational incentives to accomplish a reduction in racial isolation in the schools. The *Statement on Education and Human Rights*, adopted by the Board of School Directors on September 2, 1975, pledged the board "to work toward a more integrated society and to enlist the support of individuals, as well as that of groups and agencies, both private and governmental, in such an effort."

The superintendent, in fall 1975, submitted to the board three alternative programs—High Schools Unlimited, Schools for the Transition, and Options for Learning. At meetings on January 6 and February 3, the board endorsed the concepts contained in these alternative programs, with the understanding that specific planning for their implementation would involve broad segments of the community and the teaching staff.

The High Schools Unlimited concept recognized the fact that a single high school could not offer the variety of educational and career education courses required by all its students. High Schools Unlimited can be illustrated by viewing each Milwaukee senior high school as a triangle. At the base of the triangle would be the standard curriculum available at all high schools in the city. In the center section of the triangle would be advanced subject area programs each high school could offer in common with one, two, or three other geographically scattered high schools. At the top of the triangle would be a Career Specialty Program unique to that school and not available at any other high school in the city.

The Schools for the Transition concept proposed that schools for students in the transition years between elementary and senior high school be so diversified in program and organizational structure they would offer alternatives in education to attract pupils citywide. The schools would not only expand upon learning options for pupils in elementary schools, but would retain the exploratory nature of traditional junior high schools so that young people would be guided properly into the specialties offered by High Schools Unlimited.

The Options for Learning concept focused on students below the senior high school level. A map of the city in three concentric circles was used to demonstrate that there would be a two-way movement of students. The movement would be outward for students whose parents desired to have them attend schools in newer neighborhoods, even though economic and other circumstances might prevent the family from moving to those neighborhoods. Inward movement would take place for those students whose parents wished to have them attend alternative schools that would stress different approaches to learning. Such alternative schools would be located closer to the central section of the city.

All three of these alternative programs envisioned parents as having the freedom to choose whether their children would remain in their district schools or attend alternatives in sites outside their immediate neighborhoods. In addition to approving the concepts contained in these alternative programs, the board authorized the superintendent to proceed with planning specific details with the understanding that principals, faculty, and community representatives would be included in the planning.

The Milwaukee desegregation case began in December 1965, when Lloyd Barbee, president of the local NAACP and lawyer for the plaintiffs, brought suit against the Milwaukee Board of School Directors, the superintendent, and the secretary-business manager, on behalf of forty-one named black and nonblack children. The case was finally brought to trial in 1973, and the liability decision was handed down by the district court on January 19, 1976. The planning by the board and the administration to reduce racial isolation on a voluntary basis was in retrospect fortuitous, timely preparation for the January 19 court order.

Development and Implementation of the First Year's Plan

At its first regular meeting following the court order, the Board of School Directors requested that the superintendent submit recommendations for community involvement in preparing plans for alternative schools and integration. The board approved such a community involvement structure on March 2, and the structure came to be known as the

"Committee of 100." Communitywide meetings two weeks later in each local school eventually led to the election of the "Committee of 100," which held its first organizational meeting on April 6, 1976.

In the middle of April, the school administration presented both to the Committee of 100 and the school board its plans for improving racial balance in the schools beginning in September 1976. At this time the court had set no guidelines, goals, or statistical objectives defining either the nature of a racially balanced school or the number of such schools to be in existence by a given time. The board adopted the administration's plans with some modifications on May 4, and the Committee of 100 presented its recommendations to the special master at unprecedented televised hearings from May 12 to May 15. Along with the board plans, other plans were presented by the plaintiffs, individual groups from the community, and the Milwaukee Teachers' Education Association. The court had earlier approved the entry of the latter as an undesignated intervenor in the suit.

Following the May hearings, the special master presented his own plan to the court but unexpectedly withdrew it on June 9. Two days later, the court directed the school board to submit by June 30 a new plan that would guarantee the integration of one-third of the schools in the district by the following September. In this important June 11 order the court specified a three-phase timetable for achieving complete racial balance; by September 1977 a second one-third of the schools would have to be integrated, and by September 1978 all the schools must be integrated. Also, for the first time the court defined the nature of a racially balanced school as 25-to-45 percent black.

By June 25, the administration had developed a new plan incorporating many of the features of the April plan. It called for the establishment of fifteen specialty elementary schools, four specialty junior high schools, career specialty programs in five senior high schools, five downtown satellite centers, and a new pupil transfer plan to enhance racial balance. This pupil transfer plan was based on an extraordinary piece of state legislation that came to be called Chapter 220.

State governments have had a less-than-admirable recent history in meeting the needs of urban school districts that have come under desegregation orders. The all too common practice is for states to divorce themselves from any responsibility in meeting the increased costs associated with court-ordered desegregation in their major cities. The Wisconsin State Legislature, however, in enacting Chapter 220 demonstrated an enlightened approach to public policy formation that is a refreshing contrast to most state legislatures in similar situations.

In Chapter 220 the state of Wisconsin provided additional state aid for students assigned or transferred within a school system when this movement had a racial balancing effect. Also, special state aid was available to minority students transferring to suburban school systems and nonminority students transferring from the suburbs to minority city schools. In the case of both intra- and inter-district transfers the state picked up the full cost of transportation. This vital infusion of state aid (currently about $12 million per year) allowed the Milwaukee Public Schools to carry through on the educational innovations necessary to properly fuel a racial balance plan based on educational alternatives (Conta 1978).

The court gave its approval to the plan submitted to it by the school administration on July 9, 1976. Exactly fifty-nine days remained before the start of school on September 7, when the court ordered that at least fifty-three schools—one third of the total—had to be within a racial balance range of 25-to-45 percent black. Only fourteen schools met this standard as the school system approached the beginning of the 1976-77 school year. A major handicapping factor in soliciting the voluntary movement of approximately twelve thousand students was the fact that the summer months were not the easiest periods to contact students and families. A major thrust during the weeks immediately following July 9 was a community awareness program to acquaint students, parents, and other citizens of the possibilities available in September. We used a tabloid supplement in daily and weekly newspapers, the mailing of a personalized letter to the home of almost every student with a return postcard for more information, the eventual mailing

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of over forty thousand brochures describing the various educational options, and the information/rumor control center for telephoned requests for information. The Metropolitan Milwaukee Association of Commerce coordinated the distribution of specialized brochures to its members' employees throughout the metropolitan area.

Simultaneously, school personnel and community volunteers were being mobilized to implement the personal contact phase of the recruitment effort. The principals of twenty-four elementary and secondary schools began returning to duty on July 20 to provide leadership for individual school efforts. Assisted by other administrative personnel normally on duty during the summer, they developed a variety of methods best suited for the local school situation to personally contact students and parents to achieve the goals for their schools. Members of the Committee of 100, elected delegates at local schools, school community committees, the Milwaukee City Council of PTAs, the Coalition for Peaceful Schools, members of the clergy, and ad hoc parent groups in various parts of the city were all active at one time or another in the recruitment effort. Both the print and the electronic media provided extensive coverage of the summer activities and details of the plan itself. A series of promotional spots was broadcast by radio and television stations, and special prime-time television programs were scheduled. An unprecedented simulcast on all six local television stations and several radio stations provided the community with a midpoint report on a Sunday evening in August. Over one thousand telephone calls were handled by forty-five volunteers in a one and one-half hour period following the simulcast.

As the opening of school approached, open houses and other community activities were held at option schools and other schools included in the plan for September. The "4th R" program, funded initially by the Faye McBeath Foundation, was also announced. Available for children enrolled in the elementary and junior high option schools, the program would provide recess, noon hour, Saturday, and off-site group activities throughout the school year.

In past years the teaching staff assigned to the 158 schools making up the Milwaukee school district reported for duty on the work day immediately preceding the first day of student attendance. This procedure was altered considerably during the summer of 1976, particularly for those staff members assigned to target schools for the court-ordered one-third goal. Teachers and administrators involved with most of the elementary and junior high option schools began service five days earlier, and teachers and administrators assigned to other racially balanced schools one day earlier.

On the weekend prior to the opening of school, the school board president, in a series of spot announcements on four television and seven radio stations, urged parents to send their children to school on opening day, September 7. On the evening of that historic day, the superintendent made available to the media a school-by-school enrollment report and announced that fifty-three schools, the exact number required, had met the court-ordered goal of 25-to-45 percent black enrollment. He noted that it had not been necessary to use mandatory assignment to achieve the goal of the court.

As has been the experience for many years at the opening of a new school term, students continued to enroll in the schools during the days and weeks following September 7. Community attention during this period was focused on the ability of one bus vendor to provide an adequate level of service on all the routes for which it had contracted. Also, one option school failed to attract a sufficient number of students to make its continued operation feasible and was ordered closed as an option school and its population dispersed by the superintendent.

The traditional third-Friday-in-September enrollment report to the State Department of Public Instruction provided the base line for all student data for the 1976-77 school year. On the basis of this report, the superintendent reported to the special master that the official 1976-77 enrollment was 109,565. More significant, sixty-seven schools had now met the 25-to-45 percent black enrollment goal, a figure that was 126 percent of the court-required number of fifty-three schools and 100 percent of the school district's goal. Also reported was the fact that 330 students had taken advantage of the Chapter 220 opportunity to enroll in eight cooperating suburban school districts and that thirty-eight schools had met the court-established 11-to-21 percent black teacher staffing range.

At the same time the first year's results were being reported to the special master, Representative Clement Zablocki announced that the Milwaukee Public Schools had received a grant of $3.4 million under Title VII of the Emergency School Aid Act. The grant, which ran to June 30, 1977, had provisions for innovative instructional approaches, a remedial component, a human relations component, provisions for the dissemination of desegregation information, and evaluation and resource management components.

Basically, the plan that successfully achieved the racial balancing of one-third of the schools in September 1976 combined the magnet school concept with the more traditional techniques such as closing schools and declarations of overcrowded conditions.

Community Involvement in the Second Year's Plan

Achieving the court-ordered first-year goal by September 7 did not signal the end of the effort that began on July 9. Even before the final results were announced at the end of September, parents and other citizens, secondary students, and staff members were assembling at local schools.

At each school representatives were elected to twelve planning councils for elementary schools and one planning council for junior highs and senior highs, respectively. The elementary planning councils represented twelve "leagues"—geographic divisions of nine to twelve elementary schools grouping inner-city and outer-city schools in such a way as to have each league reflect the overall racial balance of the city. League planning councils constituted the representatives of the respective league schools.

All the planning councils began their series of meetings on or about September 22, electing their own chairpersons and setting their own meeting schedules. Two principal cocaptains were assigned to each council to serve in a facilitating role. The planning councils' activities culminated in reports that were completed on November 12. These reports were transmitted to the Committee of 100, which, after a series of subcommittee and full committee meetings, submitted its own detailed report to the school administration on November 22. It was the purpose of the leagues to cause parents and interested citizens to come together to plan the educational designs to meet the court-ordered requirements. The educational recommendations from the planning councils were forwarded to the Committee of 100 and ultimately to the board and administration for inclusion in the plan.

Published guidelines for league planning structured community involvement in a way to complement the planning base established by the superintendent's staff. That planning base included not only the geographical structuring of leagues, but also the administration's plan to phase into a K-5, 6-8, 9-12 and a complementary K-8, 9-12 grade-level structure. Having a coherent grade-level plan was the basis then of making the choice system operate effectively.

Countless hours of design and redesign went into the student assignment system. Axiomatic in the development of every stage of the desegregation plan was the administration's strong belief that the planning base and the student assignment system must remain the prerogative of the professionals. Other aspects of the plan, notably including the identification of specialty programs, were influenced and, in some cases, completely directed by parent involvement.

On March 16, 1977, the district court entered a final student desegregation remedy order based to a considerable degree upon the recommendations made by the superintendent, which first appeared in draft copy on December 8, 1976. The implementation of the order resulted in 101 racially balanced schools (now defined as having student population between 25 and 50 percent black) in September 1977. The 101 racially balanced schools met exactly the court standard for the second year.

Continued Litigation

On June 29, 1977, the U.S. Supreme Court vacated the judgment of the circuit court and remanded it back to the circuit court for reconsideration in light of two recent Supreme Court decisions—*Village of Arlington Heights v. Metropolitan Housing Development Corporation*[2] and

Dayton Board of Education v. Brinkman.[1] On September 1, 1977, the circuit court in turn vacated both the January 19, 1976, and March 17, 1977, orders of the district court and remanded the entire case to the district court.

On September 8, 1977, the circuit court issued a further order that stated, "The plan adopted by the district court shall remain in effect for the coming school year. . . ." This mandate has been followed in that all aspects of the second year of the remedial plan have been implemented and are presently in operation. On October 21, 1977, the circuit court clarified its earlier orders so as to exclude the implementation of the 1978-79 portions of the remedial plan and to disband the Office of the Special Master.

The district court determined that additional testimony should be received. Hearings commenced on January 3, 1978. After recessing on January 14, the hearings recommenced on February 14, and the court's hearings on intent closed March 8, 1978. Based on these evidentiary hearings, the court on June 1, 1978, issued a decision that essentially reconfirmed its previous findings that the defendants had administered the school system with segregative intent since 1950, and in doing so violated the rights of the plaintiffs under the Constitution. On August 2, 1978, the court ordered that an interim desegregation plan be implemented during the 1978-79 school year; this plan maintained the requirement that two-thirds of the schools would have to be racially balanced.

In July and October 1978, the district court held evidentiary hearings on the issue of present effects that resulted from the intentionally segregated acts found by the court. On February 8, 1979, the court issued a decision holding that the present effects were systemwide and directed the parties to submit proposed desegregation plans designed to remedy those present effects.

The Settlement Agreement

The most recent chapter in this desegregation case's long history has been the settlement agreement. Prior to the court's February decision on present effects, the plaintiffs' and defendants' attorneys had been meeting in an attempt to settle the case. The Milwaukee Board of School Directors had instructed its attorneys and the administration to negotiate a settlement agreement and bring back to the board for its consideration whatever compromise was reached.

Ostensibly the meetings by the plaintiffs' and defendants' attorneys were held in private, pursuant to their mutual agreement. The press did manage, however, to gain from their informants detailed descriptions of the meetings. Naturally, they published these descriptions. One of the defendants' attorneys, Mr. Lawrence Hammond, feared the premature revelation of negotiating positions because he felt board members might take positions for or against the settlement agreement based on incomplete and possibly erroneous information. In fact, this happened. Nevertheless, despite the objection of some board members who felt the settlement agreement too liberal and of the two black board members who felt the settlement agreement too conservative, the board on February 27, 1979, voted nine to six in favor of the settlement agreement. The board submitted the agreement to the court on March 1, 1979, in lieu of separate submissions of desegregation plans by the plaintiffs and defendants.

The settlement agreement calls for 75 percent of the students being in racially balanced schools over a five-year period, unless the percentage of black students increases beyond 50 percent (in which case the 75 percent standard would be reduced proportionately). Also, the settlement agreement prohibited all-white schools by requiring at least a 25 percent black population in each school. Finally, the settlement agreement provided an absolute guarantee to all parents that, if they desired, their children would be provided education in a racially balanced school.

The most controversial aspect of the settlement agreement is that it would allow some all-black schools. Both plaintiffs' and defendants' attorneys argued that the settlement prescribed a minimum standard for desegregation that met the constitutional requirements; the school board could legislate beyond this standard. Also, it was pointed out that black students were guaranteed seats in racially balanced schools if they so desired.

An opportunity for all members of the class to be heard on the proposed settlement was given on March 26 through

29. Approximately fifty individuals testified on their views of the settlement agreement. The court felt it important to have this full and complete hearing in light of the Seventh Circuit Court of Appeals' reversal of a settlement agreement involving the infamous Chevrolet engines in Oldsmobile bodies. In that case the circuit court argued that the district court had not given adequate hearings to the objectors in the class action.

The hearings were concluded on March 29, 1979, and on May 11, 1979, Judge John Reynolds accepted the settlement as negotiated. On June 20, 1979, the district court was informed that its decision would be appealed by the NAACP on behalf of the objectors to the settlement. It is anticipated that the Seventh Circuit Court will not review the settlement agreement in time to have any effect on its implementation for the 1979-80 school year.

The faculty desegregation issue has followed a developmental process paralleling the student racial balance remedy. The faculty desegregation goals expressed in the settlement agreement would require the school system to maintain two-thirds of the schools in the system with faculties within plus or minus 5 percent of the total percentage of black teachers in the system. The remaining one-third of the schools would have faculties within a plus or minus 10 percent of the percentage of black teachers in the system. The Milwaukee Teachers' Education Association has taken exception to the process for achieving these racial balance goals, and thus the settlement agreement does not contain statements on the faculty desegregation process. The plaintiffs and defendants joined together in proposing a faculty desegregation process with the understanding that the district court would have to settle the dispute. On May 11, 1979, the court adopted the joint plaintiff/defendant faculty desegregation plan.

The Courts, the Community, and the Schools

The progress of litigation since the suit was filed in 1965 deserves highlighting so the details do not cloud the major events. A thirty-day trial was held in 1973 and 1974. On January 19, 1976, the court found the system to be unconstitutionally segregated and ordered that a desegregation plan be developed. During 1976 and 1977 innumerable court appearances resulted in the shaping of the remedy previously described. On remand the district court held evidentiary hearings during January and February 1978 and once again found constitutional violation.

In July and October 1978, the court held evidentiary hearings on the present effects resulting from the segregative acts found by the court. On February 8, 1979, the court held that the present effects were systemwide and that the system had a responsibility to remedy these present effects. On March 1, 1979, the plaintiffs and defendants submitted a settlement agreement in lieu of separate desegregation plans. The court held hearings on March 26, 27, and 29 to hear from the members of the class on their objections to the proposed settlement and adopted the settlement on May 11, 1979.

Litigation stretching from 1965 to the present on the matter of school desegregation certainly fits the definition of "protracted." The period from 1965 to 1973 was a rather lethargic one characterized by spurts of information-gathering activity and requests by the plaintiffs for delay of the trial. In sharp contrast to this placid early stage stands the period of 1973 to the present. Hardly a week went by without the court's latest action receiving considerable attention by the media. As the pace of the legal activity accelerated, so did the responsibilities and obligations of the school system become more onerous in response.

The actions of the court had a sweeping, revolutionary impact on the Milwaukee community. Employees in the school system were swept along on the tidal wave of change, most swimming with the current, a few against it. Despite the prodigious changes occasioned by the directives of the court, one cannot help but be impressed with the amazing resiliency of the system—its ability to adapt itself to the new order of things and the rapidity with which it has already institutionalized desegregation policies and procedures.

To have some sense of the extent of this change, one need only look at the school system in August 1976 and compare it to the system in September 1977. During this period the system moved from 14 to 101 racially balanced

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schools as defined by the court. During the space of a year, more program change was realized than had been experienced by this writer during the previous seven years of his work with the system. Extremely complex student assignment and transportation systems were developed in record time, and the system learned to communicate with its public with speed and accuracy unapproached in the past. The pace of work in the system was immeasurably quickened for everyone, particularly those who had some direct responsibility for meeting the court-ordered goals.

The litigation and desegregation orders involving the Milwaukee Public Schools were difficult for the public and also some staff members to understand. For those staff members involved in the case the complexities of this type of litigation became more understandable. The public as a whole remained largely ignorant of the law on which this case hinged, as well as of the legal strategies employed in the process of trial and appeal.

Much of the public confusion can be attributed to the greater societal malaise regarding the goals of integration. The courts adjudicate within a society not clearly committed in its legislative actions to creating an integrated society, or for that matter desegregated schools. It is no wonder then that schools, governed by a legislative process, rarely make public policy decisions in the direction of integration and, therefore, frequently find themselves brought before a judiciary that imposes judicially what cannot be rendered legislatively (Clement, Eisenhart, and Wood 1976).

Of course, not even the courts themselves are insulated from society's confusion on integration goals. The Supreme Court, over the history of the Milwaukee litigation, has moved from a position of aggressively pursuing systemwide desegregation remedies in northern school districts *(Keyes v. School District No. 1 of Denver)* to more temperate remedies that force a more direct linkage to present effect. Milwaukee is the first of the "*Dayton* remand" cases that have actually progressed through the retrial on segregative intent and present effects. As Taylor (1977) has stated, "the *Dayton* decision does not appear to represent a change in the rules, but a slowing of the pace of desegregation by requiring lower courts to make scrupulous and detailed findings before ordering remedies."

Every decision by the federal court system on school desegregation receives an inordinate amount of both scholarly and popular attention. Every word in a decision like *Dayton* is inspected for nuance and connotation for what it adumbrates about the future direction of the Supreme Court. Whether *Dayton* prefigures a significant change in the Court's commitment to desegregation or merely a more rigorous enforcement of cause and effect relationships, pending decisions in *Columbus* and other cases may tell. In any event, the public is left largely bewildered by the actions of the courts, with at least some individuals taking pleasure in the prospect that the Supreme Court has lost its resolve on school desegregation. So the courts, instead of being a port in the storm, have in fact contributed to the general social debate regarding the goal of an integrated society.

Yet another group seeming to waver recently that in the past has been largely unflinching in its commitment to school desegregation are the social scientists. In a speech in Dearborn, Michigan, James Coleman was less than sanguine on the possibilities of successfully desegregating large urban school districts. Although the majority of carefully designed studies on academic achievement and desegregated schools still favor the finding that minority students improve and white students retain their previous academic level, there are disconcerting findings in the opposite direction. Those who would use social science to extol the virtues of desegregation or denigrate its possibilities will each find studies to match their predilections (St. John 1975).

District Court's Role

Caught in the maelstrom of this controversy, the ultimate targets of competing social agenda are the district courts and local school systems. While the Supreme Court can pick and choose the cases it wishes to shape the interpretive destiny of the Constitution, the district court cannot avoid its day-to-day responsibility for providing constitutional equity, even when the very definition of equity in school desegregation is under challenge.

All these actions by the district court have been in response to its role as the most accessible, first-level arena for constitutional equity. The public (and not a few educators) unintentionally and sometimes intentionally confuse the judicial function of the federal courts with their own or their group's legislative goals. The district court in this case, for example, is not trying to improve instruction in the Milwaukee Public Schools. The court's responsibility is rather to provide equal access to whatever quality of education exists. The court can only deal with the universe described in the complaint and the amendments to the complaint.

The Milwaukee case[4] *(Armstrong v. Brennan)* is a class action on behalf of all black and nonblack students, past, present, and future, in the school system divided for plaintiff representational purposes into named and unnamed parties. During the course of litigation the question of bilingual education and the rights of other minorities came into issue. The court, since its universe was defined as black and nonblack students, rendered its decision in terms of that nomenclature. The decision did not deal with the concerns of other minorities except to say that the defendants should minister to the needs of these groups and that nothing in the court order should preclude other minorities from realizing their rights.

The federal courts' responsibility can be inferred from the famous phrase from the *Brown* decision, "separate is inherently unequal." This statement, largely misunderstood by the public, remains the controlling language for dealing with de jure desegregation even though state and federal legislative action may be in directions antithetical to the directives of a federal court. The court has responsibility for determining if an individual or institution has operated with the intent to segregate and, if it so finds, has the responsibility to impose remedy. The findings of social science, while a part of the dicta of the original *Brown* decision, were ultimately disregarded in the phrase, "separate is inherently unequal." The word "inherently" dismisses all precedents to the absolute equation of separate = unequal. The prima-facie relationship of separateness and inequality is not mitigated by the vicissitudes of social science findings or even legislative actions (Cataldo 1978).

There are those who do not appreciate the fact that the federal court system is the ultimate interpreter of the Constitution. The action of legislative bodies from the federal level through local school boards cannot be such that they contravene the rights accorded individuals under the Constitution. Nor can the actions of school administrators in the pursuit of unlawfully conceived legislative policy be immune from constitutional imperatives. The district court, having the most intimate contact with the community in the federal court system, has the responsibility of melding the rights of the plaintiffs with the realities and idiosyncrasies of the community. This is an unenviable task at best when the matter under review is school desegregation.

Relationship between Court and School System

Of equal importance to the district court in the resolution of court-ordered desegregation is the school system. The relationship of the court to the school system is normally characterized by the expression, "the court acts and the school system reacts." Certainly, this does represent the normal communication pattern, particularly during the period just following the court order. However, the court, even with the benefit of the court consultant or special master, must ultimately come to rely on the school system to do the necessary work to comply with the court order. Therefore, school systems are much more masters of their destiny in the desegregation process than they sometimes wish to admit. School systems are not mere pawns in the hands of a willful court, but rather the offending parties who can be as skilled in the rectification of constitutional rights as they were in their disobedience.

The court and the school system each has its own language. Courts do not always make themselves clear to the school, and schools often fail to make themselves clear to the courts. Moreover, the modes of operation differ rather significantly. The court, in attempting to give a full and complete hearing to the plaintiffs, defendants, and in some cases the intervenors, is not necessarily either cognizant or respectful of the timelines that govern school system operations. Likewise, school systems cannot always produce either information or necessary action in keeping with the desires of the court. During the Milwaukee litigation the district court judge, John Reynolds, often interrupted the proceedings to ask witnesses to repeat or further explicate certain testimony. This happened frequently when testimony was being given by a school official on matters of complex school operations. In the case of protracted litigation the court does come to understand the constraints and language of the schools, and, of course, the school officials come to understand the similar dimensions of the court.

The court in its January 19, 1976, decision and order gave direction to the school system to begin at once to "formulate plans to eliminate every form of segregation in the public schools of Milwaukee, including all consequences and vestiges of segregation previously practiced by the defendants." However, it soon became apparent to the court that the system needed much more clear guidance on what the court expected in this plan. On June 11, 1976, the court provided this guidance when it defined racial balance, specified the three-year timeline for compliance, and directed the administration to modify its April plan. But not until July 9, 1976, did the court approve the administration's modified specific plan for meeting the court's specific goals. The school system was thus forced in an undesirably short period to do all the necessary and detailed things to meet the first year's goal.

Whatever confusion the initial goal and shortened compliance timeline caused the school system, it was overshadowed by complications engendered by the Supreme Court's and circuit court's vacating and remanding of the district court's final order on September 1, 1977. The vacating and remanding of this order came just three days before the opening of school. The original interpretation of these actions by the Supreme Court and circuit court, respectively, was that no order and thus no remedy was in place for the 1977-78 school year. With this understanding in mind, the Board of School Directors met and ordered the school administration to rescind any involuntary transfers that might have occurred in the process of meeting a now nonexistent court order. The administration immediately produced a form that it mailed to the parents allowing them to rescind their transfers. No sooner had this communication arrived at the homes of the parents than the circuit court on September 8, 1977, stated in a postscript that "the plan adopted by the District Court shall remain in effect for the coming school year. . . ." (Bennett 1978). This tardy communication resulted in a rather substantial confusion for parents.

Public Misunderstanding

If the federal court system often has problems communicating its desires to school officials, it has even more problems communicating with the public. The courts have their communications mediated by the press with endless commentary and analysis by those who are often unqualified to do it.

In cases involving desegregation it is not unusual for the court to appoint a special master or court consultant, partly for the reasons of improving communications. Although the special master from case to case may have different assignments and responsibilities, most often the special master functions as a link not only between the court and the school system but also between the court and the greater community. The special master, cloaked with the authority of the court, exercises significant authority in the resolution of a court order. In appointing a special master, the court adds another speaker to the court's sound system, a speaker that may not always properly interpret the message of the source. John Gronouski, former postmaster general of the United States, served as special master in the Milwaukee desegregation case from January 1976 to October 1977. His responsibilities, according to the January court order, were to aid the school system in developing a remedial plan. However, the court was careful not to restrict his scope:

> The special master will be authorized to exercise a broad range of powers, subject only to the limitations imposed by law and Rule 53 (c) of the Federal Rules of Civil Procedure. The powers of the special master shall include, but are not limited to, the authority to collect evidence, to conduct hearings, to seek the advice of experts, to commission studies and reports, to consult with community

> groups and civic organizations, and to subpoena witnesses and records. The special master should have a broad range of discretion with respect to the manner in which he carries out his assigned task, and he is hereby empowered to take whatever steps or actions he deems necessary to fulfill the responsibility imposed on him by this court.[5]

The special master in both his communications to the Milwaukee Board of School Directors and the Milwaukee community made very clear his and the court's commitment to desegregating the school system. He gave no quarter to those who would move to temper the impact of the court order; in so doing, he served as a lightning rod for criticism that otherwise might have struck the court or the school system.

Although the court invested much trust and responsibility in the special master, the court also reminded the school system that by appointing the special master it did not intend to modify in any way the school system's obligation for the preparation of a remedial plan. Unfortunately, this subtle distinction was lost on a great part of the Milwaukee community. When the public wished to be heard on the matter of influencing the remedy, to whom should it appeal as the source of authority? The special master? The superintendent? The board? The Committee of 100? The court system? By holding extensive public hearings the special master tended to leave (presumably unintentionally) the public with the understanding that he would control the school system's response to the court order. Although careful in his public presentations to remind his audience that the superintendent and his staff were the responsible compliance agents, the very act of creating an audience and holding frequent press conferences gave the public a different impression.

The litigation is replete with admonitions to school administrators as to their responsibility in conveying the purpose of the court order to the board and public. It should be noted that this advice is often given by those who never have been or will be in a position to have to follow the advice themselves. In reality the court's judgments on these matters are often beyond anyone's powers to easily and concisely understand. Often the audience for such communication is extremely hostile, and people tenaciously hold to their points of view, resisting all evidence to the contrary. Moreover, school officials are placed in the difficult position of having to explain and defend the court order to the public when they themselves are representing a system that is appealing that very order. This contradiction is not lost on attentive members of the public.

Finally, social scientists no longer speak with uniform assurance regarding the value of integration. When social science research cannot be called on to support a relationship between desegregation and improved achievement, this takes away a major weapon from the arsenal of arguments available to the school administrator. Since the argument in favor of desegregation for its own sake is often not very effective, it must ride the coattails of something else. That something else can be the mere resignation that "we have been ordered to do something now, so we must do it," or the more positive reference to improved educational opportunities. The Milwaukee superintendent and his staff chose the latter approach, promoting desegregation by emphasizing educational improvement. ("Milwaukee Leads the Way" 1979).

The court litigation process also has an impact on the general political establishment. The press not only challenged those within the system as to their beliefs with respect to the court-ordered desegregation, but also challenged other political and community leaders. Political leaders in turn assessed very carefully their constituency and their own political aspirations before responding. If their constituency was broad and divided on the merits of desegregated schooling, and if the political personalities had an interest beyond their present political positions, they most often decided discretion was the better part of valor. The issue was comfortably sidestepped by defining it as a school problem. On the other hand, some political leaders saw taking a strong position either in favor of the court's action or against it as politically advantageous. Lest this analysis seem too cynical, it is recognized, of course, that the value structure of the individual had significant influence on his or her public utterances.

Response from the Educational Establishment

Within a school system the board is the primary target of inquiries regarding views on the court case. The board has legislative responsibility for responding to the court in terms of school system policy. The board also must declare its intention to obey or not to obey the order of the court, to appeal or not to appeal the decision. Fortunately, most boards, whatever their personal views, bow to the good advice of their own counsel and agree as a body to observe the law as required by the court. In the few instances where this has not been the case, unfortunate consequences have been the result.

The decision to appeal or not to appeal the order is done within the framework of the law. Most urban school systems have followed the route of appeal in their desegregation order. The process of coming to a decision on whether to appeal the order is one fraught with all the familiar elements of political intrigue. As board members jockey for political position their actions are dutifully reported in the press.

The Milwaukee Board of School Directors consistently voted in favor of appeal after making public statements to the effect they would obey the law. Consistently, there were eight votes in favor of appeal and seven or less in favor of some alternative stance. In turn, this alignment on appeal often had consequences for the board's position on other issues, including the election of a board president. So the court order in dealing with constitutional equity affected the very fabric of political alliances so basic to the operation of an urban school board.

The school board during the entire legal sequence of appeal retains the responsibility for legislating the school system as a collective entity. The media reports the activities of the board and the court, and the public is left bewildered trying to differentiate the personal views of board members from the official actions of the majority of the board. Nowhere is this confusion more evident than when Milwaukee board members attempted to express their own views on why they did or did not vote for appeal of the district court's order. A few board members consistently espoused antipathy toward integration in any form, and, therefore, their reasons for voting in favor of the appeal were evident. Other board members had serious questions regarding the right of a federal court system to assume the responsibilities of a school board in legislating the school system. By appealing, these board members hoped that either the circuit court or the Supreme Court would concur with their view that desegregation was best left exclusively to the school board.

Still other board members were both philosophically and personally resentful of being declared guilty of discriminatory practices. These board members would often argue at length that neither they nor the board in any respect discriminated against the complaining parties. They hoped the appeal process would overturn their personal, as well as the system's, presumption of discriminatory intent.

Finally, a few other board members professed that, while they were in favor of desegregation (and possibly even the specific view on desegregation taken by the plaintiffs), they felt that the appeal of the district court's decision would have a salutary effect on the community by demonstrating that both the circuit court and Supreme Court concur with the ruling of "the local judge." Those who held this view wanted the imprimatur of the higher levels of the federal court system to discount the charge that the district court judge was arbitrary and capricious.

Even those who voted against appeal were not necessarily doing it for the same reasons. Most of the board members who voted against appeal did so because they were in basic sympathy with the plaintiff's position. They also feared that they could not achieve significant desegregation in the system legislatively and, therefore, looked to the court as the last clear hope for their minority position. Still others who voted against the appeal did so because they felt the track record on appeal was very poor; thus the decision to appeal would be a costly one.

The public, already confused by the court's intrusion on the school system, were generally unable to understand the subtle distinction in positions that the board members were assuming. Nevertheless, hard and fast alliances that crossed over into other issues were formed by board members based on their appeal position. The press found the appeal vote a shorthand method for categorizing board members and their views.

When a federal court orders a school district to desegregate, it preempts the policy-making authority of a board. In some very important respects the power and authority of school boards is diminished under a court order. Because the court has moved into the general policy role, and the school administrative staff (in some cases, outside consultants) are responsible for design of the remedy, the board is left as "third man out." In Milwaukee the press viewed the board's consideration of various desegregation strategies as an interesting but ultimately unimportant sideshow to the main event, which focused on the judge, the superintendent, and the special master. This ignoring of the board by the media and community led to some individual board members reminding those who would hear "that the superintendent is working for us." The court's presence on the desegregation issue had the effect of reversing the normal board/administration relationship such that the board served a minor and subservient role in the desegregation policy process. The exalted and uncomfortable situation that the administration found itself in will receive more comment later.

The court also had a significant impact on relations between the school system and its employee units. The Milwaukee Teachers' Education Association (MTEA) was recognized as the only intervenor in the desegregation case. The union was effective in parlaying its intervenor status into not only protecting the rights of the employees it represented through fourteen years of collective bargaining, but also improving its current contract with the help of the special master. During spring 1977, the MTEA struck the school system for seventeen days. The strike was resolved when the special master took it upon himself to intervene in the negotiations. Because he had dealt with the issue of staff desegregation in connection with the court order, he had some respect from both sides in the contract dispute. What came to be called the "Gronouski language" in the contract has, through the course of decisions, improved the position of the association vis-a-vis the board with respect to such basic issues as seniority and right of assignment. Therefore, the court in setting up the instrumentality of the special master had impact on the school system well beyond original intentions and expectations.

The union leadership found in the court a handy foil in protecting its own position with its membership. Sundry ignominies suffered by the teachers could be blamed by the MTEA leadership on the courts. The MTEA, with its intervenor status, was involved in the attorneys' discussions leading to the settlement agreement. The settlement agreement spoke to all aspects of the remedy save a staff desegregation remedy. The matter of staff desegregation was placed before the district court, with the plaintiffs and defendants advocating one procedure for attaining the staff desegregation goals and the MTEA leadership another. The MTEA leadership enjoyed the enviable position of incurring no loss regardless of the outcome. If the judge decided in favor of MTEA, the leadership could claim victory over the plaintiffs and defendants. If the court imposed the plaintiffs' and defendants' remedy, then the MTEA could conveniently blame the court for modifying the contract and divest themselves of any responsibility. The court became the chess board on which the school system and one of its bargaining units moved their pieces.

Organizing the Community

The court has served as a sounding board for diverse community groups and individuals. Some groups take their very existence from either being in support of or against the decisions of the court. During heightened periods of litigation these groups are most effective in communicating their views and promoting the interests of individuals within their respective groups. When litigation ceases or enters a hiatus, these groups tend to atrophy; the leadership in some cases grows resentful when the spotlight is no longer on them. Whereas most of these groups are ad hoc, a few of them are creatures of the school system itself, and when they suffer decline in interest and participation the school system bears special concern and responsibility. Since 1973, a number of groups have been formed to support the desegregation effort. Surprisingly, very few "anti-busing" groups have had much staying power in Milwaukee. Chief among the ad hoc supporting groups is the Coalition for Peaceful Schools. This group is an amalgam of many religious and social institutions and has served a dual role of supporting desegregated education and serving as a watchdog over administrative procedures.

The school system created the Committee of 100, which during the summer of 1977 reached its zenith of importance in the desegregation process. The Committee of 100 actually developed specific school plans that became part of the administration's submittal to the court (Bennett 1978). However, with the vacating and remanding of the order in fall 1977 and the institutionalization of the desegregation process, the practical need for the Committee of 100 underwent classic goal displacement in that it changed its charter to include the general review of quality education. The Committee of 100 arrived at this point after having been accorded no formal role in the desegregation monitoring process.

The litigation process brings into existence certain groups and for a period gives them and certain individuals in the groups unusually high visibility. Although community involvement in such a major issue as desegregation is commendable, such involvement also creates a challenging residual problem for the system when the "thrill is gone" for these groups and the system settles into a new state of dynamic equilibrium. Nolan Estes, former superintendent of the Dallas Public Schools, described community involvement as "making love to an eight hundred pound gorilla—possible to start, but awful tough to stop."

The litigation process and both the anticipation and reality of the court order have had consequences for the demographics of the community. Just how important the court order was in causing shifts of population depends on whether one ascribes to the views of someone like David Armor or, alternately, Gary Orfield. The debate on "white flight" and other population movement characteristics has resolved itself from a point where the question was, "Does white flight exist?" to a point now that questions, "How much white flight exists?" (Bullock 1976).

Accompanying population movement are other shifts in the total economics of a community. Undoubtedly, the litigation process and court order Milwaukee experienced would have had some impact on the economics of any metropolitan area. The interaction of demographic, economic, and litigation issues is confounding; when relationships are perceived in social science research, the "chicken or egg" argument ensues on cause and effect. I cannot give any attention to the macroeconomic issue in this paper, except to acknowledge its existence and hope that it receives further investigation.

Thus far our panoramic view of the impact of the litigation and desegregation process has revealed far-reaching consequences, both anticipated and unanticipated. Before I elaborate on the impact of this process on the school administration, there is one more unit that should receive brief attention. The role of teachers in some cases and respects is rather profoundly affected by a desegregation order. Of course, the teaching staff is involved in any remedy of discriminatory staffing. Beyond this, the most profound effect on the greatest number of teachers results from the changes occasioned in the schools' student body. Surprisingly, little research has been done on the beliefs and attitudes of teachers in the desegregation process (Collins and Noblit 1976). Most of that research is focused on initial stages of desegregation, sometimes when the system as a whole was in considerable turmoil.

One case study done on an elementary school in Milwaukee by William Kritek (1978) is a fine example of observational inquiry into changes the school staff underwent as a result of student desegregation. He observed teachers in a heretofore predominately white school deal with incoming black students in terms of two possible strategies. Some teachers chose to adhere to perennial standards and assume the "make them adapt" posture. Other teachers attempted to fit their expectations and teaching styles to the "needs of this new type of student." Kritek believes each one of these positions has its successes and failures in the extremes. He concluded that "desegregation clearly puts a huge burden on teachers who have become used to working in all-white schools. Maintaining enthusiasm over a full year of teaching strikes me as close to impossible."

The Administrative Staff

In the previous section some of the political dynamics existing between the court and the school board and also among board members were cited. A number of research findings have concluded that a positive attitude toward desegregation is related to successful desegregation on the part of the system. Although I take no umbrage with this conclusion, the importance of the school board in the desegregation process appears to be exaggerated. Once the board makes the basic decision to obey the law and, of course, directs the administration to follow suit, then the burden of designing and implementing a successful desegregation plan falls primarily on the school administrative staff and any consultants either they or the court may employ. Therefore, the remainder of this paper will focus on the countervailing risks, successes, and failures of the administrative staff—most notably the superintendent and his immediate staff and school principals—in meeting the requirements of the court.

The Superintendent

Most of the research on desegregation that has involved school administrators as subjects has concentrated on individual schools dealing with racial crises. As Collins and Noblit (1976) point out, "Some descriptions of administrative process in non-crisis settings would seem to help to set the stage for an understanding of the relationship of administrative procedures and crisis, but particularly it would seem a major area of needed research concerns the perceived powerlessness of administrators, particularly principals. . . . The place to start is with descriptive surveys and ethnographic investigations that attempt to document the logistics employed within centralized administrations. Without that, the research efforts at the school level may simply be naive and misguided" (p. 89). For the most part, social science researchers have not been present to view the critical leaders in the process of grappling with the issue of litigation or a subsequent court order. Most of what we know is dependent on the anecdotal musings of those administrators who were part of the process and who have attempted to recall with a sometimes failing memory the critical dimensions of their actions.

One of the most candid and insightful commentaries on the process of school desegregation comes from interviews with and articles by Carl Candoli, former superintendent of the Lansing, Michigan, Public Schools. In a few soul-searching comments he evidences the test of values that every top-level administrator comes to face one way or another:

> I think one of the reasons that we have survived with one another has been our mutual candor. There has certainly been no attempt on the board's part or on mine to hide the feelings on this whole issue. I think I have been consistent, although I have been accused of being otherwise. There have been honest and even dishonest disagreements, but basically I think that the important thing is to be consistent, to establish a position and to stay with it. Actually, the real issue here is whether individuals have a right to a personal position. I maintain that they do, and I defend that right for myself as well as for others. I am also well enough aware of the role of the superintendent of schools in implementing policy. This role dictates that the superintendent shall implement whatever policy is there to be implemented. From that point of view I would have a terrible dilemma, I suspect, were the board to change the desegregation policy, the Equal Educational Opportunity Policy that is now on the books both as a result of voluntary action and legal mandate. I could not in good conscience implement a policy I don't believe in. (Simmons 1977, p. 32-33)

There is no way that a top-level administrator can escape the responsibility for searching out his or her own values when a matter of such significant social consequence as desegregation impinges on the school system. The school superintendent's attitude toward the requirements of court-ordered desegregation is the single most important determinate to the school system's success in meeting court requirements. Unfortunately, not all superintendents believe that desegregation can be successful or can have a potentially desirable outcome. Not all superintendents have Candoli's knowledge and sensitivity to the needs of minorities, as evidenced by another of his observations:

> If parents come from a high socioeconomic level, they will not tolerate inferior education for their kids. They know all the code words, the body language, and the nonverbal expressions that can communicate to that school and the staff that they will not allow the school program to deteriorate. Poor folks, and it doesn't matter what color they are, have not learned that code. And while we are trying to teach them those code words, they remain skeptical, so we have to continue to see that the quality of education is improved. (Simmons, p. 4)

In contrast to the views and values held by Candoli are the attitudes held by another big-city superintendent during a litigation process that ultimately led to a school desegregation court order and a "gag" order placed on the superintendent himself. This superintendent in a lengthy conversation with me over lunch spoke only of the impossibilities of achieving any increased racial balance in his city; he vowed to fight the court with every fiber left in his being. With the advantage of having lived through a period called "it can't happen here" followed by "it can't be done here," I was able to comment to my colleague that the issue was not if his school system would be racially balanced but whether or not he would have a part to play in it. As it turned out, he did not.

Fortunately for the city of Milwaukee, School Superintendent Lee R. McMurrin assumed the leadership on the desegregation issue and refused all temptation to relinquish that difficult role to the courts, the board, outside experts, or some community group. Armed with a personal orientation toward the positive benefits of desegregated education, he personally led the system in a program renaissance, taking advantage of the atmosphere of crises. He aggressively sought increased financial resources for the system to meet the costs associated with desegregation and quality programs. Because his leadership was strong and his attitude so positive, his will to succeed infected other staff members.

Most of the leadership liabilities on the issue of desegregation are apparent. There is, of course, a heightened visibility for those who have leadership responsibility in the desegregation process. Clear statements and positive leadership are important during both the time of litigation and the period of remedy. There is also a concomitant responsibility to guard words carefully. The media and the public during the desegregation process tend to look for consistency in print and statement. The system and community exist in a mode of change where anxieties are high. Shifting nuances of statements that in other instances would go unheard are now exaggerated to an unintended level of importance. Moreover, because the school system is in litigation, school leaders must always remember that they are not attorneys and that they do not have the responsibility of interpreting the law. Public statements can either help or hinder the defendant attorneys in presenting their case. Therefore, discretion is needed.

It is not unusual to have the school administrative leadership moving in a direction not totally sympathetic with the board's views. The board, however, once it has made the decision to "obey the law," is somewhat sympathetic to the plight of school administrators whose responsibility it is to carry out the court order.

Typical of this dilemma was the double bind the Milwaukee superintendent found himself in as he testified in January 1977. The board had received a racial balance plan from the school superintendent that it rejected. It proffered to the court instead two plans. One plan, dubbed "The Milwaukee Austin Plan," was a limited racial balance plan conceived by the defendant attorneys to meet the specific findings of segregation that were cited as examples in the original finding of intent. In the event the court did not accept this plan, the board directed its attorneys to submit another plan that had been earlier submitted to it by the superintendent; from this plan the board excised all language the superintendent had included on a "backup" mandatory student assignment system. The superintendent was called on by the defendant attorneys to present the board's plan and also comment on the other plans in the process. Dr. McMurrin carefully tread his way through examination and cross-examination so as to fairly report the board plan while at the same time press his belief that the original plan submitted to the board and rejected by it was preferable.

In the process of litigation and the subsequent implementation of a desegregation order, school administrators frequently find themselves in uncomfortable situations. The directions of the board, the court, the community, the state, and federal agencies create multiple choice decision-making responsibilities where no foil is the right foil and there is no opportunity to please everyone.

Although the political process is important, even critical, to the success school leaders have in meeting court-ordered requirements, the leadership cannot afford to concentrate on that process exclusively (Minter 1976). In fact, the degree to which the desegregation plan incorporates lofty commitments to quality education often determines the degree of community acceptance of the desegregation plan. As Candoli (1978) states, "Communities will help in improving conditions for children and will support desegregation plans even if they are opposed in principle."

One of the most basic requirements of a plan that attempts to meet a court order is its accurate assessment of the needs and desires of the community. Urban school systems over the last few years have all moved toward more extensive community involvement, but the process of desegregation litigation engenders an even stronger demand for community participation. In providing the vehicle for participation, the administrative leadership of the school system must tolerate the ambiguities of involvement and avoid the temptation to coopt the public in the participation structure. In planning for desegregation the public sense of distrust is high. Participation must be legitimate; the only way the administration can demonstrate the legitimacy of the involvement process is to adopt the majority of the recommendations it receives from the community.

Historically, school administrators have not been comfortable with the involvement process and have often treated inquiries regarding their stewardship of the school system as threats. "If as Rist (1973) maintains, education is a form of secular religion, then administrators, teachers and counselors act as priests. The failure of some administrators, teachers, etc., to respond to crises in the school environment indicates that they are well satisfied with the 'faith' of the educational institution and that problems encountered are due to individual attributes found in protesting students and surrounding communities" (Collins and Noblit, p. 87).

The administrative leadership must not only assess the expectations of a community but also its fears. Studies of white parents in desegregating communities have consistently found two factors that summarize their concerns: fear that the quality of their children's education will decline, and fear for the safety of their children. Concerns of black parents are not as easy to summarize. Although the majority of black parents have considerable faith in the desegregation process, their faith is qualified by their past experiences with a system they perceive as giving their children an innately inferior education (Collins and Noblit).

Just how well the school leadership meets the challenge of desegregation is difficult to evaluate in part because of society's failure to agree on the goals in the first place (Rossell and Crain 1973). Not a few administrators have wondered at the irony of watching proponents of integrated education (those who presumably are in accord regarding the goals of our integrated society) act as their severest critics in the desegregation process.

The desegregation process is enormously time-consuming for school administrators. For considerable periods key members of the school administrative staff are totally devoted to some phase of the litigation process or meeting the remedy requirements of the court. Prior to the thirty-day trial period held in 1973 and 1974, countless hours of staff time went into the preparation of materials for the court. Even though a relatively small percentage of materials was entered in the record, the attorneys on both sides seemed to have an absolutely insatiable hunger for more "maps, charts, and graphs." One staff member, our director of facilities planning, was released full-time for approximately six months to serve the needs of the defendant attorneys. Many other staff members devoted long hours to describing specific matters of policy and practice that were of interest to the court.

Although the time spent by the staff members in preparing for the litigation process was extensive, this effort was a mere sprint compared to the marathon work required to meet the desegregation order. The school system made an effort to keep track of the hours spent by central office staff members in the desegregation process. (No attempt was made to keep records on school-based staff.) These record-keeping procedures were not followed by many staff members who did in fact contribute many hours to the desegregation planning and implementation. Even so, in 1978, better than 30,000 hours were recorded by approximately forty staff members in pursuit of desegregation planning and implementation. If the amount of time were calculated for school-based staff and non-professional staff members, this figure would increase many fold. Suffice it to say that litigation and the school desegregation process have had probably a greater impact on the working lives of school personnel than any single factor in anyone's recollection.

For the most part, school administrative staff at all levels approached the task of desegregation with unrelenting enthusiasm and inexhaustible energy. The courts for the first two years of desegregation gave final direction to the school system in the months of July and March, respectively. This schedule required accelerated planning and implementation efforts at all levels. The undeniable presence of challenge had the effect of pulling staff members together in cooperating patterns that had not existed before. Petty day-to-day concerns, commonplace in any large organization, were suppressed by the unremitting attention to desegregation. During infrequent periods of quiescence, staff members would take ill as if illness had been scheduled for the most opportune moment. Suffering myself from sciatica over much of the two-year period that we were most intensively involved in desegregation planning, I scheduled my hospital stays to correspond with "down times" occurring between high periods of activity. While a high sense of professionalism can be expected during periods of stress, the responsibility of the leadership of the school system is to direct this cooperative energy in the most productive fashion.

As well as spotlighting personalities in the school system and community, the desegregation process also heightens the visibility of many school system practices, including those practices substantially unrelated to desegregation. For example, how successfully a school system communicates with its public and how successfully it lobbies with state and federal sources for additional funds are but two examples of practices that were highlighted even though they had no direct relationship to litigation of the desegregation plan.

The litigation process had influence well beyond the borders of the city of Milwaukee. In spring 1976, the state legislature passed Chapter 220. This seminal piece of legislation provided additional state aids for urban districts that desegregated students within their system, and also for districts that participated in city/suburban student transfers to enhance racial balance. There is no question that this legislation could not have come into being had not the Milwaukee Public Schools come under court order to desegregate. The court order generated considerable sympathy on the part of legislators throughout the state and served as an entree for other types of political pressure to be applied that resulted in the legislation. Although the court and the litigation process had no direct effect in creating Chapter 220, the law probably could not have come into existence without the litigation process.

Student policies and practices come under close scrutiny as a result of desegregation. A review of a school system's expulsion and suspension rates is an example of this concern. Suspension practices for many years may not have come under any review, but the racial balancing of schools became an occasion for intensive investigation of suspension policies and practices to ensure that they were not discriminatory.

The school curriculum can become a topic of renewed community concern, even though the district court's only act is to ensure access to whatever quality education existed. The highlighting of these policies and practices and the response to the public's clarion call for reform, while commendable (and a clear opportunity to bring about necessary change), are nonetheless another prodigious task for staff already consumed with the exigencies of the student assignment plan and other aspects of the desegregation process. The public expects the school system to deal successfully with the logistical strategies of the desegregation plan and at the same time to treat the other issues the spotlight of desegregation has uncovered.

Since the desegregation process assumes the center ring, other special interest groups in the community have problems finding the attention and advocates they think they deserve. Members of these special interest groups attempt to accommodate this problem in two ways—they either raise the decible level and frequency of their complaints or try to ride the coattails of desegregation, even if their cause and desegregation results in a curious juxtaposition of alien elements. Some of these special interest group representatives have great success in working out their agenda under the rubric of desegregation. The leadership of the school system should expect and understand this phenomenon. In the Milwaukee experience both exceptional education and bilingual education groups were able to continue to hold considerable attention by using every desegregation forum as an occasion to espouse their cause.

Even though court requirements receive preeminence, the school system also must respond to other regulatory agencies and statutes. This can result in conflicting directions that leave the urban school administrator bewildered. For example, the order issued in March 1977 defined a racially balanced school as 25-to-45 percent black. However, for the purposes of receiving Title VII, Magnet School funding, a school was required to be in the range of 20-50 percent minority. At the same time, Wisconsin's Statute 220 provided desegregation aid to Milwaukee under the classification system of "greater or less than 30 percent minority." The bilingual community consistently challenged the court with the question, "Are we minority or are we non-black?"

Because the decision rules regarding court, state, and federal standards were not in accord, both the public and school staff were confused regarding which decision rules governed student movement under the desegregation plan. Add to this definitional confusion the requirements under the *Lau* decision to provide special programs for students whose primary language is other than English, the requirements under P.L. 94.142 (also Chapter 115 of the Wisconsin Statutes) to provide special education services to handicapped children, and finally the special requirements for Title I-ESEA funding, the state's 13 Standards, and other funding or regulatory measures, and one can come to understand the enormously complex environment in which desegregation plans must be fashioned.

Because there are so many competing rules and regulations, no single individual in the system can know in detail all components and give them specific direction. After giving general background to all the individuals responsible for the various components, school system leaders must then trust that the components interface properly and that some reasonable degree of coordination is achieved. In my role as being responsible for the design and implementation of the desegregation plan, I attempted at all critical planning junctures to bring together representatives from all the program and special interest areas to assure at least minimum communication and the imbuing of basic systemwide strategies.

The Principal

If the superintendent and his or her immediate staff have a key role to play in the overall response to the challenge of desegregation, then the principal has the key role in dealing with the plan at the local school level. Research on school desegregation is replete with statements that the principal is a most important individual in the process of desegregation (Collins and Noblit, p. 88). As with the superintendent, the values and beliefs held by the principal are important determinants of how successfully his or her school will meet the desegregation requirements. The school teaching staff takes its cue from the principal. The activist principal has the opportunity to take advantage of the desegregation change process to make other necessary changes in the school (Forehand 1977). Conversely, the school principal can view desegregation as a burden placed on the principal by the courts and the central office and direct his staff and school accordingly.

During periods of litigation and following a court order, principals are sought out by the press for comment. They have a work schedule that includes additional evening meetings occasioned by the desegregation process, and they often have a major role to play in the student assignment process. In summer, they have a more difficult and longer workday than in normal times.

The school principal was the key figure in the student assignment process under the Milwaukee desegregation plan. The principals assumed direct responsibility for counseling students and parents in directions that would serve student program needs and at the same time increase the racial balance in the system. This responsibility required of the Milwaukee principals a substantial reorientation. They no longer served the insular interests of their attendance area community but now were expected to receive students from the neighborhood into other schools. For principals and counselors long used to extolling the virtues of their own school, the responsibility for counseling students out of the school was particularly onerous (Kritek 1978).

The principals were required to become transportation directors. For most principals, having a substantial portion of their student body transported to school each day was a new experience. Because the Milwaukee desegregation plan was based on parent choice, the resulting transportation network is considered to be the most complex in the nation.[6] The transportation problems fell most directly on the school principal, who received transportation complaints and was expected to deal successfully with them.

Not surprisingly, these new requirements and, for some, the hiatus between their personal values and the goals of desegregation occasioned an increase in the number of retirements and other resignations from our school system. However, the vast majority of the principal corps gave unstintingly of their time and talent to achieve the desired results.

It is important to comment briefly on the minority administrators and their special concerns in the litigation and desegregation process. It must be remembered that through the litigation process the school system was officially defending itself against the charges of discrimination. As a group the minority administrators were almost universally opposed to the defense premise and were, therefore, extremely uncomfortable with what they saw as the inherent hypocrisy of the system. While wanting to be part of the team and meet their responsibilities with the administrative structure, they had special problems during those moments when personal views and system views clashed. The minority community looks to the minority administrators for greater input in the desegregation process than they can often deliver. There is also the matter of job security. While northern desegregation approaches have not followed this pattern, it has been common in some southern desegregation remedies to find minority administrators losing their positions to white administrators. Although this overt pattern has not been the recent practice, this knowledge may not be sufficient to reduce anxiety.

During the desegregation process the "affirmative action" responsibilities of the system come into sharp focus even if the litigation does not precisely touch on it. When the top leadership of a school system going through desegregation is predominantly white, there cannot help but be some challenge to this circumstance, and the minority administrator wonders if he or she ought to be properly the challenger. Even in situations where minority representation is evident in the leadership of the system in the desegregation process, these individuals will often be singled out by members of their own community as targets of derision for not delivering what the minority community expects.

Urban school desegregation is an event played against the backdrop of changing racial representation in the city and a shift in the city's power structure from white to minority. The importance of this larger context cannot be underestimated in understanding the course of litigation and desegregation.

Summary

In the fourteen-year history of this litigation and particularly the last six years, we have seen school desegregation become the most important issue in the Milwaukee community. Both the process of litigation and the resulting court orders have had a profound effect on the community and its schools. Court activities have had both anticipated and unanticipated consequences for the community.

I have reviewed in general the impact of this issue on many sectors of the community and none focused specifically on school personnel, the school board, and notably the superintendent, his top administrative staff, and the school principal. The common impact on all elements of the community was the acceleration of activity and change. All roles were made more complicated as the lives of people increasingly were caught up in the vortex of court-ordered desegregation. Policies and practices, whether new or old, came under intensive inspection. The community was introduced to a new vocabulary, and the leaders of the community, both old and emerging, were constantly tested by the media as to their views on desegregation.

Although the settlement agreement is predicted to be the last chapter in this protracted litigation process, this may not be the case for the obvious reason that the settlement agreement is being appealed. As long as the contest remains in our society over the goals of integration, there will be no common measure of success for those involved in school desegregation.

Footnotes

1. Amos v. Board of School Dirs. of the City of Milwaukee, 408 F. Supp. 765, 818 (E.D. Wis. 1976).
2. 429 U.S. 252 (1977).
3. 433 U.S. 406 (1977).
4. Armstrong v. Brennan, 539 F.2d 625 (7th Cir. 1976).
5. Amos v. Board of School Dirs. of the City of Milwaukee, 408 F. Supp. 765, 818 (E.D. Wis. 1976).
6. Observation related to author by John Thome, vice-president of Ecotran-CHI, Inc., bus routing consultants to the Milwaukee Public Schools.

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[illegible] SCHOOL [illegible] AN EXPERT [illegible]

[illegible] University

"[illegible], DESEGREGATION, AND [illegible]: A LOOK AT BOSTON," [illegible] and Walter McCann, Graduate School of Education, Harvard University

"THE IMPACT OF [illegible] ON A DEFENDANT'S [illegible]" by [illegible], deputy superintendent, [illegible] Public Schools

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